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Via Electronic Submission

December 20, 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: **Memorandum of *Ex Parte* Communication**

CC Docket No. 01-338, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers

CC Docket No. 96-98, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996

CC Docket No. 98-147, Deployment of Wireline Services Offering Advanced Telecommunications Capability

Dear Ms. Dortch:

Pursuant to 47 C.F.R. §1.1206(b), attached for inclusion in the record of the above-referenced proceedings, are two letters from the undersigned and supporting documentation, which address the substance of meetings held with members of the Federal Communications Commission Wireline Competition Bureau staff, Office of the Chairman, and Office of Commissioner Copps. The first letter urges adoption of an effective transition plan for unbundled network elements ("UNEs"). The second letter refutes regional Bell operating company allegations of below UNE cost pricing and exaggerated claims of competition and customer service in urging objective adoption of fact-based impairment criteria and on going attention to incumbent carrier performance assurance plans.

Sincerely,

LDMI TELECOMMUNICATIONS, INC.

/s/ Jerry Finefrock

Jerry Finefrock
Vice President Regulatory Affairs

Attachments

cc: Chris Libertelli, Matt Brill, Jordan Goldstein, Dan Gonzalez, William Maher, Jeff Carlisle, Scott Bergmann, Rich Lerner, Michelle Carey, Brent Olson, Tom Navin, Jeremy Miller, Rob Tanner, Dan Shiman, Steve Morris

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Dear Ms. Dortch:

Several recent proposals for transitioning away from the unbundled network element platform ("UNE-P") have been advanced to the Commission, which seek to establish an effective process for meeting the 1996 Telecommunications Act's impairment test for unbundled network elements. These proposals, while differing in their specifics, propose similar criteria that will serve as benchmarks for an objective, fact-based determination of when competitive local exchange carriers (CLECs") are no longer impaired in their ability to economically and reliably serve subscribers in the absence of incumbent carrier UNEs in each market. The purpose of this presentation is to underscore and elaborate on the need for the Commission to adopt these essential criteria, from LDMI Telecommunications, Inc.'s ("LDMI") [1] own commercial local market experience and perspective.

[1] LDMI is Michigan's largest competitive telecommunications company, with more than $100M in annual revenues. The company has been a facilities-based interexchange carrier since its inception in 1992 and is profitable. Over the next two years, LDMI plans to invest in building out its network to include three switches and more than 40 incumbent collocation arrangements to serve its growing local exchange service subscriber base.

The Commission's Impairment Test Must Entail an Objective, Fact-Based Approach – A "Three Legged Stool." Through the Commission's *Triennial Review Notice of Proposed Rulemaking* the Commission must, consistent with the decision in *USTA v. FCC*,[2] conduct a detailed, fact-specific analysis of factors[3] identified by the Commission as essential to an impairment analysis, pursuant to section 251(d)(2).[4] Ostensibly, these factors are intended to be objective and fact-specific, strongly suggesting a market-by-market analysis.

Recent proposals from the Association of Communications Enterprises ("ASCENT")[5] and Talk America/Broadview Networks, Inc./Eschelon ("the CLECs") offer effective recommendations for establishing such objective, fact-specific, market-based considerations in their recommendation of a wire center level wholesale market-based impairment test (ASCENT) and a wire center CLEC-based test which considers subscriber line aggregation as a determinant for appropriate economies necessary to transition from the UNE-P (the CLECs). Both proposals recognize that **wholesale market availability** of competitive alternatives to certain UNEs and CLEC **economies of scale** will be the overriding considerations of any impairment analysis. Equally important is a third, imperative leg of the UNE-P transition "stool" presented in CompTel/PACE's proposal, [6] and also addressed in the ASCENT/CLEC proposals: an effective customer migration or **"hot cut"** process which ensures that once a CLEC deploys its own network, its customers can be quickly, accurately (an automated process), and economically transferred from the incumbent's UNE-P to the CLEC's network. These proposals envisage that the UNE-P may not necessarily be a permanent medium for serving local subscribers, a consideration of the courts. [7] Each of these proposals raise key elements that should be integrated into any impairment test if it is to be effective *and* equitable.

Competitive Wholesale Availability of UNE Alternatives By Wire Center Is at the Heart of Any Impairment Test. Underlying both the ASCENT and the CLECs Proposals is a market-by-

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[2] *See United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA v. FCC*").

[3] The Commission seeks comment on applying the unbundling analysis to (1) specific services; (2) specific geographic locations; (3) differing facilities; (4) specific customer types; and (5) requesting carrier type. *Triennial Review NPRM* at para. 35. In seeking comment on applying the unbundling analysis to specific services, the Commission solicits input on how to factor in the level of competition for a particular service. *Triennial Review NPRM.* at para. 38. More generally, it strongly encourages parties to submit evidence of actual marketplace conditions, indicating that evidence of that type "will be considered more probative than other kinds of evidence."

[4] 47 U.S.C. §251(d)(2).

[5] *A Market-Based Approach to Unbundled Local Switching and UNE-P Transition*, Association of Communications Enterprises *Memorandum of Ex Parte Participation*, CC Docket Nos. 01-338, 96-98, and 98-147 (December 4, 2002).

[6] Competitive Telecommunications Association/Promoting Active Competition Everywhere ("PACE") Coalition *Memorandum of Ex Parte Participation*, CC Docket Nos. 01-338, 96-98, and 98-147 (October 31, 2002).

[7] Last minute regional Bell operating company proposals to use DS0 enhanced extended loops ("EELs") are unworkable, as CLEC experience has shown. Notwithstanding provisioning and subscriber migration issues, EELs are not economically viable and have not demonstrated their worth as an alternative to the UNE-P.

market evaluation of competitive alternatives to incumbent UNEs, including unbundled local switching ("ULS"). The necessity for such an evaluation should be intuitively obvious. Historically, competition has developed in more concentrated markets due to increased economies of scale associated with serving densely populated markets. Despite the rhetoric, RBOC networks were themselves first deployed in densely concentrated areas. As new competitive alternatives for ULS or other UNEs develop, it is only reasonable to expect that these alternatives will develop first in major metropolitan areas, and only then will such alternatives be available in suburban and rural areas. Wholesale elimination of the UNE-P or individual UNEs without the benefit of a market-by-market analysis will result in the impairment of CLECs to serve suburban and rural subscribers as the cost of network deployment in those regions will initially prove economically prohibitive.[8] Affected subscribers will be forced to revert to incumbent carriers. The countervailing effect is the antithesis of what the 1996 Telecommunications Act's and the Commission's universal service policies have sought to promote.

Preservation of the UNE-P for Business Subscribers is Crucial for Smaller CLECs. The ASCENT and CLECs' plans do not attempt to differentiate markets between residential and commercial subscribers. Regional Bell operating company ("RBOC") proposals have suggested that the UNE-P should be removed for commercial subscribers altogether. This recommendation is utterly void of factual support and suggests no objective basis for meeting any type of fact-based CLEC impairment criteria test. Differentiation between residential and commercial markets for purposes of establishing impairment is irrelevant, and would have dire consequences for smaller commercial subscribers. LDMI currently serves approximately one tenth of Michigan's estimated 300,000 commercial interexchange subscribers, and is rapidly building a similar base of commercial local exchange subscribers. These subscribers are located in virtually

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[8] LDMI agrees with state regulators (*See, e.g.* National Association of Regulatory Utility Commissioners *Notice of Ex Parte Written Comment,* November 20, 2002) and others, that state regulators are best situated to make such market by market impairment evaluations:

> Most, if not all of [the Commission established factors essential to an impairment analysis] are highly fact-specific and may vary from geographic region to geographic region, and accordingly, state commissions are, no doubt, best situated to conduct these analyses. As a result, the state commissions should be enlisted to assist the Commission in implementing section 251(d)(2) of the Act. Indeed, in the *Triennial Review NPRM*, the Commission itself "recognize[s] that state commissions may be more familiar than the Commission with the characteristics of markets and incumbent carriers within their jurisdictions, and that entry strategies may be more sophisticated in recognizing regional differences." [citation to Commission *Triennial Review NPRM at para75*]. ... Clearly, the state commissions are best situated to ascertain local competitive conditions in applying federal unbundling criteria. States not only have the local experience and expertise necessary to make such determinations, they also routinely utilize the processes and procedures – including discovery, sworn testimony and cross-examination on the record – that are essential to reasoned fact-finding. [Footnotes from original omitted.]

Access Integrated Networks, AT&T, Broadview Networks, Competitive Telecommunications Association, El Paso Global Networks, Eschelon Telecom, Ionex Telecommunications, Inc., KMC Telecom, New Edge Networks, PACE Coalition, Talk America, WorldCom, Z-Tel Communications, Inc., *Memorandum of Ex Parte Participation,* CC Docket Nos. 01-338, 96-98, and 98-147 (October 24, 2002).

every SBC wire center throughout Michigan, from concentrated metropolitan areas to isolated rural areas in Michigan's Upper Peninsula. In the absence of a market-based impairment test, the wholesale elimination of UNE-P for commercial subscribers would result in LDMI's immediate inability to serve nearly all of its commercial subscribers, with the possible exception of those located in major metropolitan areas. Notwithstanding the impact on CLECs and their subscribers, the RBOCs' proposal is unsupportable from an economic,[9] and a network perspective.[10] Objective fact-based impairment criteria must remain the foundation for any UNE impairment test in a given market regardless of the type of subscriber served.

Further Enhancements to The ASCENT and CLECs Proposals Should be Incorporated Into an Impairment Test. The ASCENT and CLECs plans establish the core tenets for an effective, fact-based, impairment test in each market. Building upon these core tenets, an impairment test should further include a line threshold criterion which acknowledges how smaller commercial subscribers' equipment interconnects with telecommunications networks. Additionally, a transition period should be established for CLEC network deployment after any UNE-P to UNE-Loop trigger is met, and the continued need for CLECs to rely on the UNE-P in satisfying transition triggers should be adopted.

The Equipment Used by Smaller Businesses to Interconnect With Telecommunications Networks Must be Considered as an Impairment Criterion. The impact of an impairment test on all CLEC subscribers and how they are served by CLECs must also be considered as an impairment criterion. A significant majority of smaller, multi-line commercial subscribers who compromise a significant portion of smaller CLEC customer bases, those typically subscribing to 50 lines or less, rely on "key systems" rather than private branch exchange ("PBX") systems to

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[9] LDMI approximates that of the 8.78 million lines served under the UNE-P through out the U.S. estimated by the PACE Coalition, 1.4 million of those lines represent commercial subscribers. Consistent with LDMI's experience, each commercial subscriber represents 5 access lines. On this basis LDMI estimates that more than 280,000 commercial subscribers are currently being served under the UNE-P. For the majority of these primarily small business subscribers, the UNE-P has for the first time enabled them to consider competitive alternatives to incumbent local exchange services. As perhaps as 75% of these smaller commercial subscribers reside in areas where facilities-based competition does not now, nor will for the foreseeable future exist, these companies will be forced to revert to becoming captive incumbent subscribers well into the future. These subscribers will be effectively precluded from access to innovative and economically priced telecommunications services that will undermine their significant contribution to America's economy.

[10] In the two-thirds of SBC Michigan wire centers where SBC acknowledges that no facilities-based competition exists, commercial customers would have no alternative but to revert to SBC. *See, In the matter, on the Commission's Own motion to consider Ameritech Michigan's Compliance with the Competitive checklist in Section 271 of the federal Telecommunications Act of 1996,* Michigan Public Service Commission, Case No. U-12320, ["Michigan 271 Proceeding"] LDMI'S Comments regarding SBC'S Statements At Hearing Of November 25, 2002, at 26, citing SBC Ameritech Michigan handout, November 25, 2002, at 46, (November 25, 2002). Data presented by LDMI in this proceeding demonstrated that while SBC asserts only one-third of SBC Ameritech Michigan wire centers today contain collocations, true "dial tone," switch-based competition exists in only one-sixth of SBC Ameritech Michigan wire centers today. LDMI'S Comments regarding SBC'S Statements At Hearing Of November 25, 2002, MPSC Case No. U-12320, page 26, citing Transcript of November 252, 2002 hearing in Case U-12320 , pages 5923-5924, Michigan 271 Proceeding (December 13, 2002).

meet their telecommunications needs. As explained in greater detail in the attachments, [11] analog key systems, unlike digital PBXs cannot be easily or economically connected to digital T1 (DS1) facility interfaces for purposes of interconnecting to a CLEC's switch. Although many newer key systems are indeed digital, the RBOCs have historically imposed higher rates to business line Ms. customers who prefer that their business lines be provided on digital facilities, by convention. That subscribers are frequently held to long-term contracts, further exacerbates the impairment CLECs would face without consideration of a line threshold criterion.[12] The alternative of deploying CLEC facilities or leasing individual incumbent digital loops would prove cost prohibitive. CLECs who serve smaller businesses using key systems would be impaired in their ability to serve these subscribers in the absence of the UNE-P, accordingly. These technical considerations associated with serving smaller commercial subscribers utilizing 50 lines or less must be factored into any impairment analysis.

Once Market Non-Impairment Test Criteria Are Met, A Transition Period Is Necessary to Enable Full Network Deployment. Once it has been determined that CLECs are no longer impaired in their ability to serve subscribers in a market without access to incumbent UNEs, this trigger should start the clock for CLEC migration between the UNE-P and the UNE-L. This transition cannot be a "flash cut" of all subscribers from the UNE-P to the UNE-L in an affected market. CLECs will be able to anticipate markets in which they will be deploying facilities, but will nevertheless require sufficient time to purchase new equipment, establish relationships with alternative vendors, test network capabilities, and migrate customers onto new networks. Based on its experience, LDMI supports the CLEC proposal that an initial migration period be set at 18 months. When new collocation thresholds are met, subsequent migrations should be set at six months to complete a seamless, transparent transition for subscribers.

CLECs Should be Able to Continue Serving Subscribers Under the UNE-P Until Non-Impairment Market Criteria Are Met. Because economy of scale dictates when a CLEC will not be impaired in its ability to economically deploy switching and facilities in the absence of the UNE-P, economy of scale considerations should be an integral component in any impairment test. CLECs must be given an opportunity to build up a sustainable base of subscribers to realize the economies of scale necessary to meet non-impairment triggers. New entrants, or CLECs serving new markets, will need to develop subscribers through active market and sales efforts. These entities should be allowed to build their subscriber bases toward meeting line concentration non-impairment triggers without being forced to enter into the unwise and potentially ruinous "build it and they will come" business strategies that lead to the downfall of many over-leveraged CLECs.[13]

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[11]These attachments, from CLECs and telecommunications experts having relevant knowledge, experience, and perspective, address the basis for impairment to small commercial subscribers with 50 lines or less.

[12] For this reason, the Commission's current well intentioned four-line restriction on unbundled local switching [47 C.F.R. §51.319(c)(2)] in the top 50 metropolitan statistical areas represents an unwarranted barrier to many small businesses.

[13] "We recognize that there will be a continuing need for all three of the arrangements [resale, UNEs, and facilities] Congress set forth in section 251 to remain available to competitors so that they can serve different types of customers in different geographic areas [cite to *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC

The ASCENT, CLEC, and CompTel/PACE Proposals Incorporate the Essential Criteria that Will Constitute a Defensible Market UNE-P Impairment Test. The three underlying core tenants of the ASCENT, CLEC, and CompTel/PACE proposals for establishment of non-impairment triggers: 1) wholesale market availability of alternative UNE vendors; 2) CLEC economies of scale; and 3) and effective incumbent UNE-P to UNE-L customer migration process, represent the essential objective criteria for an UNE-P transition process. These proposals offer objective, fact-based market triggers for UNE-P to UNE-L migrations that:

- Enable CLECs to reach a critical mass of subscribers;
- Compel CLECs to deploy facilities when they succeed in each market;
- Tie impairment to the existence of an effective and economic UNE-P to UNE-L migration process.

Adoption of theses proposals will result is an equitable, objective, fact-based set of impairment criteria that that will meet the FCC's expressed objectives of promoting economic investment in facilities infrastructures. These proposals, coupled with the additional considerations addressed by LDMI herein, will form a long-term national impairment evaluation benchmark that can be implemented by the states in the markets they oversee, and ensure that CLECs affirmatively develop their own infrastructure when the obstacles for such development are removed. Adoption of these factors will move the nation forward in creating the level of meaningful local intramodal competition and infrastructure envisioned by Congress and the Commission, for the benefit of all consumers.

Respectfully submitted,

LDMI TELECOMMUNICATIONS, INC.

/s/ Jerry Finefrock

Jerry Fineforck
Vice President Regulatory Affairs

Attachments

Rcd 15499, 15509, para. 12 (1996)]. We continue to believe that the ability of requesting carriers to use unbundled network elements, including various combinations of unbundled network elements, is integral to achieving Congress' objective of promoting rapid competition to all consumers in the local telecommunications market [cite to *Local Competition First Report and Order*, 11 FCC Rcd at 15509, para. 12.]. *See In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Notice of Proposed Rulemaking, CC Docket No. 96-98 (rel. November 15, 1999) at para. 5.

Listing of Attachments

1. *Comments on Restriction of UNE-P Network Access Lines*, Richard A. Kuehn, RAK Associates

2. *Local Services Business Case*: Why the 3-Circuit Rule Must Be Changed Margi Shaw, CIMCO Communications, Inc.

3. *The ULS Line Count Restriction: Analyzing A More Appropriate Limit for Business Customers, Craig Siwy, Telecom Insight, LLC*

4. *A Transition Plan for UNE-P: Meeting the Court's Tests While Preserving Competition*, Jerry Finefrock, Power Point presentation (December 18, 2002)

EXHIBIT 1

Comments

On

Restriction of UNE-P Network

Access Lines

December 20, 2002

By: Richard A. Kuehn
President
RAK Associates
17894 Clifton Park Lane
Cleveland, OH 44107
216-228-2045

The purpose of the attached pages is to provide background information to support the fact that any restriction placed upon the use of Unbundled Network Elements in the provision of dial tone telephone service to small business should be set, if at all, at somewhere above an individual business line requirement of forty to eighty. To set any such restriction lower would remove the vast majority of the small businesses of America from accessing the benefits of competitive local exchange dial tone services.

BACKGROUND

These comments are prepared by Richard A. Kuehn, President of RAK Associates a telecommunication consulting firm located in Cleveland, Ohio. Kuehn has been President of RAK Associates since its founding in 1962. During the past four decades Kuehn has been involved solely in telecommunication consulting working with business users in the design and selection and implementation of telephone systems; negotiation of both Interexchange carrier and local RBOC Individual Case Based volume and term discount contracts. In addition he has provided Expert Testimony or Reports in numerous Federal District Courtsand before public utilities commissions in rate and service complaint cases. Particularly germane to the UNE-P issue at hand Kuehn has negotiated over $25 million dollars in individual case base volume and term commitment agreements with regional Bell operating companies over the past three years.

In addition Kuehn has been the author of the Consultants Corner column and Business Communication Review for the past 27 years. He has served as editor of the Telecommunication Information Management Journal. He has provided hundreds of articles and speeches throughout the telecommunication industry over the past forty years. He most recently presented a symposium to doctoral students at the Beijing University of Post and Telecommunications on telecommunication issues of the day. He is the author of two books published by the American Management Association. One of which, "How to Buy a Telephone System" has been used as a class text by many universities offering a telecommunication curriculum. Finally, he has taught over 500 public seminars in the subjects of telecommunications management and the purchasing of telephone systems for both the American Management Association and Business Communication Review.

Kuehn is one of the ten founders of the Society of Telecommunication Consultants. He is a graduate of Case Western Reserve University. It is with this background that these comments are prepared.

It is the purpose of these comments to support the concept that if any restriction under UNE-P service as to the number of business lines supplied to an individual business customer site is to be invoked that restriction should be upward of 40 to 80 such dial tone lines. This will be viewed from the perspective of the customer. This customer is usually a small business. This will be discussed from the perspective of equipment available and competitive services from which the small business owner might select. There is no intent to enter the debate as to the appropriateness of UNE-P pricing today. It is the author's opinion that pricing should remain in the purview of the individual state regulatory bodies as it is today.

Personally, over the past six years negotiations for reduced rates as a result of committing to multi-year installation terms for dollar volumes have been conducted with all of the regional Bell operating companies. It has only been in the past three and a half years that these negotiations have met any success. Each of these negotiations is generally begun on the theory that the customer has no particular desire to depart from the incumbent supplier. However, with the possibility of securing equal or better service and support the pressures of today's economy dictate that any savings which can be effected either through negotiations with the incumbent or a change of suppliers should be pursued. The risk/reward of securing that saving through the changing of provider rests in the mind of the customer.

In the particular instance used in this illustration, which began 3.5 years ago, the client had some 1,200 locations located in all 50 states with an annual gross local service expenditure of some $10 million. This was almost evenly distributed over what was then five regional Bell operating companies with some $2 million spent in each territory.

The initial approach was one of contacting each of the RBOC's to determine what would be offered in a volume and term discount. One of those immediately suggested a three-year term contract with appropriate dollar commitments and approximately a 19% volume and term discount. The other four entered into protracted negotiations, offering approximately 6% discounts. Those discounts ultimately were negotiated, after two years, to the 20% level and contracts were completed early in this year. The exception to this has been Verizon which has basically refused to negotiate. Recently conversion to a telecommunication wholesaler using Verizon provided UNE-P services has begun.

These 1,200 client sites typically use 12 business lines to provide connections to the voice telephone system, facsimile machines and modems. The approximate 20% savings (from the resale provider) in local telephone service cost will allow the client to continue to serve its customer base at the most competitive prices possible. The client will also receive a consolidated bill making administration of

the multiple small systems easier and an account representative that has an interest in serving this small customer's needs. Increasingly smaller customers whether in the local exchange or interexchange carrier market are being relegated to "second class" status.

In fact, it has only been in the past 18 months that RBOC's have made available term and volume discount contracts to small business users. It is believed that this is a direct result of the availability of competitive services using the UNE-P Platform. It is clear that the availability of competitive service created by the UNE Platform has caused these RBOC to create these smaller service offering volume and term discounts. These discounts increase ? are referred to as "retention", or a customer remaining with the RBOC and a "win back", a customer returning to the RBOC from a competitive supplier. To initiate or enforce a restriction as low as four business lines as the upper limit of a single site UNE-P competitive offering would result in every client across approximately 300 sites to leave their resale provider and increase the operating costs of these sites by approximately $300,000. per year. There is no alternative available for sites of this size. While one can argue the fact that potentially some upward limitation as to the number of business dial tone lines provided is necessary, four is very clearly too small a number.

Using generally accepted telephone engineering practices for a PO1 level of service (1% busy signal rate) which is the norm in network business line standard design the quantity of business lines and the average number of telephone station instruments within the organization which can be supported can be projected to be as follows:

4 Business Lines support 10 telephones
5 Business Lines support 16 telephones
10 Business Lines support 52 telephones
20 Business Lines support 96 telephones
30 Business Lines support 244 telephones

For example, four business lines providing network access are generally capable, on the average, of supporting ten telephones. This would be a relatively small site. If consideration is then given to the fact that in addition to those four business lines serving the ten telephones the typical business today could also be expected to have at least one facsimile line and another dial up modem for Internet access it is very easy to exceed that low minimum. Thus, placing a four-line limitation would restrict the business offering of UNE-P to my local barbershop. As can be seen, economies of scale are gained the larger the business line group becomes. For example, ten business lines can support 52 telephones, etc. That breakdown follows very closely the general telephone system product types historically offered to the business community. Essentially there are three types of telephone systems offered to the business community:

1) A key telephone system. These are multi-line telephones in which all business lines appear as buttons on all telephones. These systems reach a maximum size in the 32 to 48 instrument size. This limitation is a result of the footprint which the user is willing to tolerate upon their desktop together with a size of each button, or line pick up, on the telephone itself. Since by definition each line must appear on a button on every telephone the 12 to 18 button maximum pushes the footprint to its maximum size.

These systems have historically been designed to handle analog central office line terminations. ***The use of a DS-1, or T-1 central office connection would not be economical at this size***. (The breakeven between individual analog lines and a T1 is 12 to 16 lines.) Again, in a system of this size additional lines could be expected to be terminated at the same site for facsimile machines, dial up modems, dial alarms, etc.

2) Hybrid key telephone systems were introduced in the mid 80's by manufacturers of key telephone systems. The major difference between this and the key telephone system is simply that all lines do not have to appear on all telephones plus dial access to pooled number groups (i.e., dial 9 to reach an outside line which is similar to a PABX) is a system feature. Typical maximum size of these systems is in the magnitude of 100 to 150 station telephone instruments. Many of these systems use multiple small hunt groups to serve individual departments within the organization plus pooled number groups to place outgoing telephone calls.

Again, because of the nature of the customer base the manufacturers traditionally have not provided capability for the direct connection of DS-1 or T-1 channels to the telephone system. While in this case the probable number of business lines could exceed the quantity necessary to justify the installation of this T-1 channel, the inability to directly connect it to the telephone system would present problems. Granted, a channel bank could be installed between the T-1 interface and the analog trunk interface on the telephone system and ancillary equipment. However, the majority of these systems are provided by small local "interconnect" providers who generally would find the support of a T-1 channel beyond their technical capability and normally would not carry such a product in their portfolio of offerings. Thus, in order to take

advantage of the lower cost T-1 access the business customer would potentially be required to deal with several suppliers while adding the channel bank as an additional point of failure in the telecommunication chain.

3) PABX systems (Private Automatic Branch Exchanges) today are typically served utilizing T-1 trunk access. These could begin at approximately a 50 to 75-instrument size and grow to as many as tens of thousands of instruments with hundreds of trunks or more. Yet these large sites too could potentially benefit from UNE-P services. In this instance the application would not rest with the PABX itself. However, experience has indicated that throughout the confines of the business user with a PABX system there can be found dozens of individual measured business lines terminating on separate stand-alone devices such as facsimiles, modems, dial alarms and similar devices. Historically, the manufacturers of the ancillary type of equipment have recommended "direct central office connections" and strongly recommended against operating such devices using station lines associated with PABX systems. Therefore, in this case to limit the quantity of UNE-P terminations at a specific address would prevent the large business user from taking advantage of this offering.

To restrict the quantity of UNE-P lines by customer address would prevent a viable source of competition to a very large portion of the business community when in fact there is no viable competitive offering available. It would further inhibit the competitive carrier from a valuable source of customer base and therefore slow down, if not prevent, their ability to assemble a critical mass of customers in a concentrated geographic area to justify their conversion to the provision of competitive facility based services. Therefore it is recommended that no address restriction as to the quantity of Unbundled Network Element platform lines be invoked. If, such a restriction is imposed it should be at 10 to 20 times the suggested 4 minimum, or 40 to 80 business lines .

Local Services Business Case: Why The 3-Circuit Rule Must Be Changed

Prepared by: Margi Shaw
CIMCO Communications Inc.[1]
December 20, 2002

The initial business models for the "Facilities-Based" CLEC had defined the ideal on-switch customer as any business customer with 24 lines. All the performance models and projections were built around the "perfectly" packaged customers. Then reality set in, business customers' dial tone requirements do not come in the pretty packages in the business plans. Even those business customers, which initially are configured per the business models, inevitably change or add to their service now causing them to no longer profile. It's always the case an ideal customer with 24 lines now want to add the 25th line, no longer does the economic equation make sense. Customers with multiple locations further complicate the situation, as each location does not profile equally. It is undisputable, that the business community requires fairly priced services with the flexibility to add and delete services as necessary. The current UNE-P rules have allowed this flexibility and have caused a segment of CLEC's to emerge with fairly priced, robust product offerings and broader serving areas.

The "Real" customer configuration: All Business customer locations are either solely analog services or the more sophisticated applications are a mix of both digital and analog. No business customers are serviced solely by a digital T-1 or ISDN Prime service. This would not be a recommended configuration by any Telecom Professional. In order to provide a disaster recovery plan, no customer should have all of his or her dial tone riding on a single T-1 facility. This configuration is not recommended as it even puts at risk the basic access to E911 in the event of an emergency, if that single T-1 facility is down. Line quantity thresholds would drive customer configurations, which would not be in the customer's best interest, and would not fit their actual application requirement. The judgment call to install T-1 facilities at a customer location is NOT a quantitative decision; it is application based and needs to remain that way. UNE-P

[1] CIMCO Communications, based in Oakbrook Terrace, Illinois, has been providing integrated communications services for over 17 years. The company's offering includes voice, data, and Internet - enabling customers to bundle all their communications needs into one complete package. CIMCO is the alternative for business customers needing flexible, tailored solutions; personal attention; and truly understandable billing.

restrictions should not limit a CLEC's options in configuring the best network services for the customer applications no matter the quantity of lines at the location.

Cutover Requirements: The conversion process under this scenario requires converging all the dial tone onto a single facility. This risks sever outages during the conversion process. It essentially requires a brand new installation of facilities and a flash cut of their services. Business customers require seamless installations and mitigation of any risk of outages.

Flexibility to Add Services: The current UNE-P rules allow for business customers to easily add or delete lines from their service. If line thresholds were set for UNE-P, customers would no longer be able to change services as conveniently. As a matter of fact, if a minor change caused the customer to no longer profile for UNE-P the CLEC would have to change the entire underlying platform and risk a problematic interruption of service. Any thresholds should remain high enough to avoid these needless reconfigurations and customer inconvenience for the majority of customers.

Exposure to Outages: Line quantity thresholds will expose customers to a single point of failure in their local service. The single point being their single T-1 facility as opposed to multiple analog DSO level services. If a construction crew cuts one or two lines, the customer service in interrupted. If their T-1 facility is cut, the customer is hard down and suffers greatly. Customers are aware they must always have back up of analog lines intermixed into their configurations. CLEC's must have the flexibility provided through UNE-P to provide these insurance plans for their customers regardless of the number of total lines at the customer premise.

Equipment restrictions: Customers have been installing analog services i.e.; Centrex, pots and analog trunks for years through the ILEC. The Key Telephone Equipment in the market place is designed to interface specifically with these analog services. Imposing low line threshold into UNE-P availability would require the CLEC's to interface with digital T-1 services. These digital services will not interface with the customer legacy systems without costly upgrades or complete replacement. In essence, requiring the customer to make large capital investments to participate in the competitive marketplace. Imposing higher thresholds: (50+ lines, not > 3 lines) would ensure that these customers could retain their existing equipment without sacrificing the ability to choose a new local service provider.

In conclusion, UNE-P has been a tremendous tool in the competitive marketplace to truly offer choice to all customers both residential and business. Any rules contemplated to further define the use of UNE-P should be based on the practical applications in the marketplace. We should all be most concerned about the customer's experience and ensuring that any rules support the best customer experience possible.

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The ULS Line-Count Restriction: Analyzing A More Appropriate Limit For Business Customers

By Craig Siwy

December 20, 2002

The current FCC restriction on unbundled local switching ("ULS") for customers with four or more lines represents a significant impairment, as it does not appropriately consider the lack of CLEC alternatives in most real-world business customer situations. Parties have assumed that above three lines, alternatives exist for direct digital connections from a CLEC switch to a customer telephone system, bypassing the need for ULS switching. As we conclude below, the actual configuration of business telephone systems does not permit adoption of such direct digital connections, except at significantly higher line sizes.

Telecom Insight LLC[1] is an independent consulting firm that analyzes the telecommunication needs of small and medium sized businesses and recommends the best solution for local and long distance service and the equipment required. Our experience is primarily with small business customers with less than 50 lines. All of these customers have conventional key and hybrid telephone systems. While telecommunications service is important to these customers, it is not their focus. They simply want reliable service and equipment that meets their business needs. Small businesses are always looking for ways to lower expenses, but they are loath to spend

[1] Craig Siwy, the principal of Telecom Insight, has 19 years' experience in the telecommunications industry. Mr. Siwy worked in the regulatory affairs department at Ameritech for 15 years. His work included managing FCC access charge dockets in the late 1980s, managing rate cases in Illinois in the early 1990s, and managing local issues in Wisconsin in the 1990s. Mr. Siwy managed the first UNE filings in Wisconsin in 1997-98. Since early 2000, Mr. Siwy has provided consulting services on access charge and UNE issues to carriers, as well as advising enterprise customers about their local and long distance services.

significant capital dollars. They will only make capital expenditures if there is reasonable payback in lowered expense.

This paper addresses the issue in the Federal Communications Commission's ("FCC's") Triennial Review of the appropriate number of business lines for which the FCC should continue to require the Regional Bell Operating Companies ("RBOCs") to provide the unbundled network element platform ("UNE-P") to competitive local exchange carriers ("CLECs"). Telecom Insight believes that the appropriate ULS line limit be set in the range of 40 to 60 lines, or roughly the capacity of a medium sized hybrid key telephone system.

Analyses to this point from other parties have focused on the cross-over point between analog lines and a single T-1 circuit. Typically, a CLEC is able to connect a T-1 via a UNE loop to its switch that is collocated at the RBOC's central office. The T-1 can be divided into 24 voice channels or 23 primary rate interface ("PRI") channels plus a signaling channel. The argument is that a CLEC's ability to provide T-1s to its network precludes the necessity to obtain UNE-P from the RBOCs. According to this argument, any customer with lines numbering more than the analog-to-T-1 cross-over point (12 or 13 lines) would logically order a T-1...

Conversely, below the cross-over point, customers would order analog lines. These small businesses, below an effective choice point for direct digital connections, would be in a similar position to residential customers when it comes to choice of local service provider. The conclusion, according to some parties, is that the RBOCs would no longer be required to offer UNE-P for business customers larger than 12 or 13 lines.

This analysis fails to take into account the entire business decision that an enterprise customer makes in purchasing telecommunications service. The decision goes beyond a simple tariff analysis calculating the price difference between analog lines and a T-1 circuit. Ordering a T-1 requires the enterprise customer to incur capital costs and additional maintenance expense. To the extent a business customer incurs additional capital and expense costs, the number of lines subject to the UNE-P requirement must increase.

For background, setting Centrex aside, enterprise customers purchase three general types of telephone systems: key telephone systems, hybrids, and private branch exchanges ("PBXs"). Key systems are controlled by a key service unit ("KSU"), which scans incoming lines and alerts the attendant of incoming calls. Calls are accessed or put on hold by punching buttons. Key systems are rated according to the number of lines and stations it supports. A 6 X 12 system could terminate six central office lines and 12 stations, plus multiple intercom paths.[2] Strictly speaking, conventional key systems allow single-line telephones to access to only one line. Access to each line must be hard-

[2] Green, James Harry. The Irwin Handbook of Telecommunications, 4th Ed. New York: McGraw-Hill. 2000. p. 472.

wired. The practical upper range for conventional key systems is 24 lines, otherwise the system is physically too unwieldy.[3]

Hybrids are key systems that allow single line telephones to access a pool of lines. This enables a system to serve more telephone stations. The other outstanding aspect of hybrids is that they have enhanced features and functions found in PBXs. Hybrids are as large as 200 lines, but hybrids are best for customers with 30 to 100 station ports. While the distinction is not clear between a large hybrid and a small PBX, typically PBXs are the best choice for customers with 100 lines or more.[4] A primary driver is cost. Key systems cost about $300 - $400 per station; hybrids cost $500 - $700 per station; PBXs cost $800 -$1000 per station.[5]

A significant difference between PBXs and key systems is that PBXs can accommodate direct T-1 interface, while only some high-end hybrids can.[6] Telephone technology continues to evolve. Manufacturers are developing more hybrid systems that have T-1 interfaces. Regardless, small and certain medium sized systems do not have T-1 interfaces. The salient point, however, is that the preponderance of the installed base of hybrid and conventional key systems cannot accommodate a direct T-1 connection. Small to medium business customers with 40 - 60 lines or less would have to buy additional equipment in order use T-1s, rather than analog lines. The enterprise customer would have to purchase one or two T-1 channel banks and system routers, as well as battery back-up. The capital cost per T-1 for equipment and installation range from $1000 to $4000, depending upon the equipment purchased. It is advisable to purchase the more dependable, but more expensive equipment. Amortized over 36 months, the capital cost of a T-1 adds about $100 to the monthly cost of service. In addition, maintenance and repair costs range $100 - $150 per hour. Additional equipment will certainly drive up maintenance expense.

This capital and expense expenditure is a significant barrier for many small businesses. Small customers are unwilling to spend an additional $4000 to install a T-1 after purchasing a key system for $8000. Telecom Insight, in its experience, does not know of a single conventional key system or lower end hybrid customer who has contracted for a direct T-1 connection to a CLEC solely for the purpose of reducing its local telephone expense, or choosing an alternative local telephone supplier. (Customers often purchase T-1s in order to obtain bandwidth for data needs, including Internet access, or to obtain the functionalities of a PRI, or to allow for future expansion.) It is Telecom Insight's opinion that the typical small-enterprise customer will not purchase a T-1 to replace analog circuits unless it will save several hundred dollars per month. The additional equipment and labor costs of a T-1 wipe out a good portion of the monthly savings. The time, bother and risk of installing a T-1 are not worth it to the customer unless the savings are significant.

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[3] Green. p. 477.
[4]. Ibid.
[5] "Voice Telephony & Network Design." Certificate Program in Telecommunications Analysis. Department of Business & Management, University of Wisconsin-Milwaukee. September 2001.
[6] Green. p. 477.

Only higher end hybrid key systems and PBXs with 100 stations have T-1 interfaces that make additional equipment unnecessary. And as we have noted above, key systems cost about $300 - $400 per station; hybrids cost $500 - $700 per station; PBXs cost $800 - $1000 per station. Because of these economics, small businesses are led to conclude they should stay with a key system for as long as possible as their employee-count grows, and migrate to a higher end hybrid or PBX only when absolutely necessary. Since only higher-end hybrids and PBXs typically have the ability to accept a direct plug-in of a T1 from the CLEC, this significantly limits the applicability of direct CLEC connections.

Therefore, the number of business lines that should continue to be subject to UNE-P is significantly higher than the 8-, 12- or 24-line limits suggested by other parties. Given the additional costs of equipment, our experience in the marketplace, and our experience with actual customer decisions in these circumstances, an appropriate range for setting the ULS line limit would be in the range of 40 to 60 lines at a customer premises.

A Transition Plan For UNE-P:

Meeting the Court's Tests While Preserving Competition

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12/18/02

About LDMI

- LDMI: largest telecom company headquartered in Michigan: $100 million annual revenues.
- A facilities-based long distance carrier, since its inception 10 years ago. Now profitable.
- Over next 2 years, plans 3 CLEC switches, and 40+ colocations.

Choosing A Transition Plan

- LDMI supports the ASCENT UNE-P transition plan [ex parte, 12/4/02], (market-based test where "market" equals a ***wire center***).
- The Talk America/Broadview/Eschelon transition plan (CLEC-based test, again based on lines in a given ***wire center***) also has merit.

Rejecting Unreasonable Views

- FCC is right to look askance at CLECs who have local switches and colos, and choose not to use them.
- Views that say "UNE-P must remain, everywhere and forever" may not meet the court test.
- But RBOC statements about UNE-P are outrageous, untrue and must be rejected.

The Hot-Cut Problem

- FCC accepts there is a hot-cut problem, and it must be solved.
- But it must be solved first: the transition away from UNE-P cannot begin until the hot-cut problem has been solved, else RBOCs will never solve it.
- If there is a solution to hot-cut problem that doesn't involve electronic and automatic processing, we don't know what it is.

Other Strange And Unusual Last-Minute "Alternatives" Must Be Rejected

- DS0 EELs will not work. Those few carriers with DS0 EELs experience note it failed miserably. It has its own host of manual hot-cut problems. Its economics appear totally unfavorable. The RBOCs can and will foul it up.
- DS0 EELs cannot in any way be considered a substitute for UNE-P.

FCC Must Preserve Business UNE-P Service During The Transition, Equal to Protection of Residence UNE-P Service

- AT&T and WorldCom may not care about business UNE-P, but dozens of other CLECs ***and their business customers*** do.
- There are 300,000 business establishments in Michigan, and 30,000 of those are LDMI customers.
- LDMI has UNE-P business customers in every Ameritech wire center in Michigan, including the furthest rural portions of the Upper Peninsula.

Preserving Business UNE-P (cont.)

- There are now an estimated 8.78 million UNE-P lines (Pace Coalition, 11/13/02), and we estimate that 1.4 million of those lines are business UNE-P lines.
- At an average of 5 lines per business customer (LDMI business UNE-P average, which we believe is representative), we estimate 280,000 U.S. businesses are now served by UNE-P.

Preserving Business UNE-P (cont.)

- For those 280,000 U.S. businesses, UNE-P represents their first chance ***ever*** to save money or have an alternative, for their local phone service.
- These are small businesses, which numerous studies have indicated are the key driver for our economy, and the key engine providing new jobs in America.

Preserving Business UNE-P (cont.)

- For those 280,000 U.S. businesses, if the FCC takes UNE-P away, where will they go?
- For the great majority, they will be forced to return to the RBOC they were trying to escape: facilities-based competition does not exist in about 75% of U.S. wire centers today, and won't, for years to come.

Preserving Business UNE-P (cont.)

- For small businesses with less than 50 phone lines, the impairment is the same as for residential phone customers.
- Large businesses with digital PBXs can prove in T1 (DS1) interfaces, connecting to a CLEC switch.
- But below 50 lines, small businesses have key systems, often analog, that cannot enjoy such opportunities.
- Facilities-based CLECs are typically selling to businesses who transmit digitally (T1 and above): and that's businesses with more than 50 phones.

Preserving Business UNE-P (cont.)

- There is a misconception that since many key systems (serving 50-line or less businesses) now operate digitally, that means the business can connect to the CLEC digitally.
- Most RBOCs have continued historic policies where they charge extra to connect business lines to the customer on digital, rather than analog facilities. So the key systems continue to be designed and engineered with analog interfaces.

Preserving Business UNE-P (cont.)

- Small businesses also tend to be tied-up by long-term RBOC contracts, that represent a further impairment.
- Although well-meaning, the FCC's existing 4-line restriction on UNE-P, and "densest part of MSA" restriction is an unwarranted barrier to many small businesses who are impaired; as UNE-P transition plan that meets the court test is implemented, that restriction should be removed.

The Test Regarding UNE-P Elimination Must Be At ***Wire Center*** Level

- It does no good to declare the Los Angeles "market" to be competitive, if customers in many of the wire centers in that market do not have competitive CLEC opportunities.
- The competitive test must be done on a wire-center by wire-center basis – and the state commissions are best equipped to make that granular determination.

CLECs Need Time To Build Facilities

- Initial migration: 18 months
- Subsequent migrations: at least 6 months

CLECs Must Be Able to Continue to Acquire Customers via UNE-P

- In existing collocations to achieve sufficient numbers of lines for migration
- To acquire customers in non-collated locations to build toward density triggers
- To acquire and serve customers who have both on-net and off-net locations

Meeting FCC's Concerns

- Both the ASCENT and Talk America/Broadview plans answer the need:
  - Enabling CLECs to reach critical mass, but requiring them to migrate to facilities-based CLEC operation when they succeed.

Meeting DC Circuit Tests

- For both ASCENT and Talk America/Broadview, impairment is tied to ILEC hot cut inadequacy and network/interconnection costs imposed on CLEC by ILEC
- ASCENT vs. Talk America/Broadview:
  - ASCENT requires 5 independent wholesale carriers at the wire center level for migration
  - Talk America/Broadview has a line density requirement at LATA level, and a line density requirement at the wire center level

Under Either Migration Plan:

- ILECs needto remove hot cut impairment
- CLECs must deploy facilities
- FCC needs to set national guidelines
- States must implement migration rules

Result: Rational, economic investment in facilities-based competition for all consumers.

LDMI's Network Economics

- LDMI's gross margins on both facilities-based long distance, and UNE-P based local service, are about 50%.
- Sales & customer service costs: 20% of revenue. General & administrative costs (G&A), 20% of revenue. Net margin: 10% of revenue.
- 50% + 20% + 20% + 10% = 100% revenue.
- Only a portion of net revenue flows to profit: after tax profit is well below 10%.

Network Economics (cont.)

- RBOCs would have you believe that a lower gross margin on UNE-P is "acceptable" – such as 20%.
- Result:
  - 80% cost for UNE-P
  - 20% cost for sales & customer service
  - 20% cost for G&A
- CLEC can't ***make*** money: they are guaranteed to ***lose 20%*** on every dollar of sales!

Conclusions

- FCC should adopt either the ASCENT or Talk America/Broadview UNE-P transition plan.
- Every state commission has told you the Bells are wrong when they say TELRIC is priced below cost – extensive hearings and testimony, etc.
- No evidence supports SBC/RBOC claims about losses or other dire predictions. FCC should support a system that has been proven to work, and implement a transition plan that meets the test of the courts.

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Via Electronic Submission

December 20, 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: **Memorandum of *Ex Parte* Communication**

CC Docket No. 01-338, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers

CC Docket No. 96-98, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996

CC Docket No. 98-147, Deployment of Wireline Services Offering Advanced Telecommunications Capability

Dear Ms. Dortch:

Throughout the course of the Commission's *Triennial Review*, the regional Bell operating companies ("RBOCs") have pursued incessant attacks on unbundled network element ("UNE") pricing, alleging that UNE pricing is below cost. They claim *inter alia* that below-cost pricing of UNEs forces them to subsidize competition and stifles network investment. The RBOCs have also made other dubious claims to advance their interests generally. Many of these claims can be easily disproved through publicly available information.

LDMI Telecommunications, Inc. ("LDMI")[1] has been an active participant in Michigan Public Service Commission UNE costing and other proceedings, and has witnessed first hand what amounts to a parade of SBC falsehoods regarding UNE pricing and competition, addressed herein. RBOC representations made to regulators, the media, and the investment community, reveal that the sole purpose behind the RBOC's relentless pursuit of UNE rate increases is to

[1] LDMI is Michigan's largest competitive telecommunications company, with more than $100M in annual revenues. The company has been a facilities-based interexchange carrier since its inception in 1992 and is profitable. Over the next two years, LDMI plans to invest in building out its network to include three switches and more than 40 incumbent collocation arrangements to serve its growing local exchange service subscriber base.

foreclose competitors from competitively serving subscribers under the UNE – Platform ("UNE-P") and moreover, to maintain RBOC market dominance. The Facts are as relevant to all RBOC claims as they are to SBC's specific allegations in Michigan. The litany of these and other RBOC falsehoods strongly suggest the continued need for objective, statistical performance metrics and impairment evaluation criteria, which cannot be easily manipulated or obfuscated.

Introduction: The Technical and Financial Environment Facing Competitors. LDMI in Michigan is beset by an extraordinarily powerful former monopoly. Over the last six months, SBC has made it abundantly clear that it will crush its competition and drive all competition out of business.

For example, UNE-P margins in Michigan, when factoring cost of operations, sales and customer support currently result in a net margin of, at best, ten percent. Yet SBC has filed in Michigan to increase the UNE-P rate by 135 percent. Rebuffed by the Michigan Public Service Commission the first time, SBC will shortly file again. And while there is no justification for an increase of any kind, their political power today is such that some increase will be forced through, despite the circumstances. An increase of 20 percent, for example, would render UNE-P unprofitable.

LDMI has embarked on a course to migrate to switch based CLEC operation, establishing a number of collocations in Michigan and Ohio. Yet recent efforts by SBC to pursue a UNE price increase could render facilities-based operation unprofitable as well.

Pending establishment of switch-based CLEC operations, LDMI would like to connect to many of its customers on a direct T1 basis from its existing long distance switch. Using integrated access, it could provide Internet, long distance, and terminating local calling to customers in this manner. But FCC policies for pricing of such circuits, unreasonable rules, and lack of control on outrageous monopoly practices render this opportunity unworkable.

The average distance of a T1, LDMI switch to customer location, is 18 miles. Customers want to order service month-to-month: they don't want to be locked into a long-term arrangement. Under existing SBC special access pricing in Michigan, LDMI's cost for such a T1 is $1,129.16 per month[2] If LDMI is willing to commit to a 60-month contract (and bet that customers will remain subscribed to LDMI services), the special access price is $502.86 per month. Meanwhile, under individual case basis contracts which SBC refuses to make available to LDMI, SBC sells

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[2] *See e.g. In the Matter of AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM No. 10593, Comments of LDMI Telecommunications, Inc. (December 2, 2002) ["LDMI Special Access Rulemaking Comments"], and *In the Matter of the Complaint of the Competitive Local Exchange Carriers Association of Michigan, CMC Telecom, Inc. Long Distance of Michigan, Inc., McLeodUSA Telecommunications, Inc., MichTel, Inc., and the Association of Communications Enterprises Against Ameritech Michigan Inc. for Anticompetitive Acts and Acts Violating the Michigan Telecommunications Act,* Michigan Public Service Commission, Case No. U-13193, Direct Testimony of Jerry W. Finefrock (November 15, 2001) ["Finefrock Michigan Testimony"], attached.

the same service to ISPs in Michigan for $195 per month. [3] Under total long run incremental costs ("TELRIC") enhanced extended loop ("EEL") pricing, the cost of that T1 to LDMI would be just $90.23 per month., LDMI cannot, however, obtain EELs because of the incumbent's arbitrary EELs restrictions.

The nonrecurring charge for LDMI to turn up a T1 month-to-month under special access is $1,493.00, but ISPs can usually get the same circuit for zero installation cost. The result of all this: LDMI has only 150 such T1s in total: only three-tenths of its business customers have such a circuit; our marketing studies say that if LDMI could avail itself of the TELRIC based cost, fully thirty percent of our customers would justify a direct T1, or a one hundred fold increase.

Federal policy which promotes competitor departure from reliance on ULS switching, yet which would continue to allow SBC to pursue its discriminatory pricing policies on special access pricing will undermine competitors' ability to compete. Yet the FCC appears to support the incumbents' arguments on EELs restrictions without considering the consequences to competitors.

What could the FCC be thinking?

A central policy issue arising from the Commission's *Triennial Review* is the desirability to foster network investment. The FCC wants us to move to switch-based CLEC operations. Under today's capital-constrained conditions, competitors must be assured to realize the maximum return for their investments. LDMI intends to install in the coming months one CLEC switch to serve all of Michigan and interconnect to the incumbent's network in approximately 40 collocations. InterLATA fiber is available at the DS-3 level at reasonable prices from various suppliers, but the "last mile" to the SBC wire center is another matter. LDMI studies indicate that in the case of fully two thirds of those wire centers, SBC is the only provider which has transport available into those wire centers (central office buildings). Under existing TELRIC pricing, LDMI studies indicate it can cost-justify those collocations and turn up service. But the FCC is considering eliminating the transport UNE. Should this occur, under Michigan special access pricing policies, LDMI's costs will triple, rendering most collocation options uneconomic.

The FCC is seriously contemplating TELRIC price increases, and a revised TELRIC pricing methodology, seemingly based almost exclusively on incumbent claims (led by SBC) that TELRIC is priced below cost. The National Association of Regulatory Utility Commissioners says it isn't true; and as we show below, the SBC claims are built on a series of falsehoods. In other cases, the FCC contemplates removing pricing elements from TELRIC and moving them to "market based" (whatever the RBOC thinks it can get away with) pricing.

What could the FCC be thinking?

Despite evidence showing that there are about 8 million successful UNE-P lines in the country, and that in about two-thirds of the involved wire centers no switch-and-collocation-based

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[3] Not an unreasonable price: SBC in Texas, "Tex-Am 2000", appears to sell the same service for $170/month.)

competitor to the RBOC exists, the FCC is contemplating eliminating thethe elimination of ULS from the list of UNE obligations, and forcing subscribers to revert to the incumbent's phone service.

What could the FCC be thinking?

Several leading CLEC groups have suggested an effective migration path for UNE-P, that meets the tests of the courts, and demonstrates the clear path for migration to switch-and-colo based CLEC operation, but indications are some in the FCC may reject such a reasonable solution to a difficult problem, and opt for a solution drastically disruptive to millions of American consumers and hundreds of thousands of American businesses.

What could the FCC be thinking?

In the early 1980s, at the behest of the same RBOCs, the FCC embarked on a plan to increase the price for switched access as paid by interexchange carriers. In very short order, the price for what became known as switched access rose from one-half cent per minute to ten cents per minute. Years later, interstate switched access prices were again reduced, to about a half-cent per minute, where they had begun. But following the steep ramp up in switched access prices, hundreds of interexchange carriers were driven out of business, unable to adjust their other costs in short order to account for the sudden change in their cost of doing business.

What could the FCC have been thinking?

A few years ago, incumbent primary interexchange carrier charges were allowed to go into effect, on the basis that some incumbent access costs were fixed and did not vary by the minute. This was to be a more equitable and direct method for allocating to customers. This "adjustment", shifted a significant portion of the costs over to business customers, and particularly, the small business customers who are the driver of new jobs and our economy. Interexchange carriers were forced to pass these costs on to customers, creating anger and resentment. Later, policies eliminated many of these PICC charges.

What could the FCC have been thinking?

LDMI has estimated that 280,000 small business establishments are today, for the first time ever, enjoying reduced local phone costs and the opportunity of being served by a competitive local phone carrier with innovative services, as a result of UNE-P. The Court is not forcing the FCC to eliminate ULS and UNE-P. LDMI and other CLECs and organizations have proposed mechanisms which address the concerns of the Court. The states strongly urge the FCC not to take such action.

Will the FCC take action to support and advance the interests of small businesses and consumers across the country, or will it take action that serves only the interests of the entrenched Bell monopolies?

The Commission should be cognizant of the incumbent's history of exaggerated claims and falsehoods intended to mislead competitive public policy, as the following examples underscore:

Fiction 1: RBOC Profits Are Falling Precipitously Due to "Below Cost" UNE-P Pricing. SBC Chairman Ed Whitacre has characterized wholesale UNE pricing as "nuts,"[4] claiming that the incumbent's profits are "falling like a rock," as a result.[5]

The Facts: For calendar year 2001, *Fortune* Magazine listed SBC as one of the thirty largest Fortune 500 companies. SBC's 2001 profit margin – net income after taxes – was 15.8%, **more than three times the average** 4.6% profit margins recorded for the remainder of the Fortune 30 companies. In the first quarter of this year, SBC's profit margin *increased* to 16.3% compared to an average of 6.1% for other Fortune 30 companies. SBC's profit margins increased another half of a percent to 16.8% in the second quarter of 2002, an level which the incumbent maintained in third quarter 2002. SBC has successfully held its profit margin at three times that of its Fortune 30 peers.[6]

In comparison to with telecommunications industry indicators, SBC has performed exceedingly well:[7]

- Return on Assets – SBC 6.9%; Industry 0.9%
- Return on Investment – SBC 9.0%; Industry 1.5%
- Return on Equity – SBC 20.5%, Industry 4.0%
- Operating Margin – SBC 20.6%, Industry 12.6%
- Profit Margin – SBC 15.0%, Industry 1.7%.

Public statements made by SBC's Chief Financial Officer, Randall Stephenson, confirm SBC's financial successes:[8]

- "our balance sheet is second to none right now...
- "we are going to throw off just in excess of 3 billion dollars of free cash flow after dividends this year.
- "The result of all that is I would tell you ***we're the best capitalized telecom business in the world***...
- "when you compare us to our peers in this industry from just a pure financial position, we are ***second to none***....

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[4] *Crain's Detroit Business*, quoting Mr. Whitacre (September 2, 2002).

[5] *The Digest*, quoting SBC President Ed Whitacre's statement to the *Detroit Free Press* (August 29,2002).

[6] Fortune 500 data, Fortune, 2001. 2002 data compiled from MarketGuide/Provestor Plus Company Reports from www.multex.com. SBC's calendar year 2001 after tax profit margin per the Commission's ARMIS data base., reflects an after tax margin of 11.5 %, nearly two percentage points above the 9.8% RBOC average (See attachment 1).

[7] MarketGuide/Provestor Plus Company Report, SBC Communications Inc. (December 15, 2002).

[8] Randall Stephenson, SBC CFO, Bank of America Securities Annual Investment Conference, September 23-26, 2002 [emphasis added].

- "our ***free cash flow*** before dividends this year ***will nearly double what we achieved last year***."

Placed before a backdrop of these results, SBC's profitability claims defy credulity.

Fiction 2: SBC's Declining Profitability Is Worst in the Ameritech Region and Particularly in Michigan.[9] According to SBC statements, the Company lost more than $1 billion during the last three quarters.[10]

The Facts: According to SBC data reflected in the Commission's ARMIS database for calendar year 2001, Ameritech Michigan's profit margin was 18.5%, six times the 2.8% margin average for Fortune 500 companies and higher than any other SBC company.[11] Had Ameritech Michigan been listed as a Fortune 500 company for calendar year 2001, its after-tax net income would have ranked it ahead of 375 of the Fortune 500: ahead of Dow Chemical and even General Motors. Ameritech Michigan's after tax profit per access line was more than $133.00, more than any other RBOC and three times Verizon's per access line profits.[12] In 1996, Ameritech Michigan had after-tax net income of $458 million, and this figure then grew by 40 percent to reach the 2001 number of $640 million. This equates to nearly two-thirds of a Billion dollars earned from a state that constitutes roughly 3.5 percent of the U.S. population.

Fiction 3: The UNE-P Must be Priced Above Cost. In late August 2002, SBC demanded that the Michigan Public Service Commission authorize a UNE-P increase to its true cost of $34.00.[13]

The Facts: On November 18, 2002, SBC submitted into the Commission's record its plan for the "Development of a Sustainable Wholesale Model", where UNE-P-like service would be provided to CLECs at a price of $26.00. If, as SBC testified in Michigan, its ***cost*** is **$34.00** and it is precluded by Michigan law in selling service below cost, how can it then be willing to provide its proposed service for **$26.00?** Yet SBC CFO Randall Stephenson has been quoted as stating that that at $20 to $21, the UNE-P price is reasonable "So [in the] state of Texas, it's about a $20/21 UNEP... at $20/21, you have good, vibrant competition and it's not at such a level where we cannot earn money or are disincented to invest."[14] This $14.00 disparity in "cost" between the $34.00 demanded in Michigan, and the acceptable $20.00 cost in Texas, makes SBC's "costs" a

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[9] *Detroit Free Press* (August 31, 20020; *Chicago Tribune* (September 4, 2002); TR's *State Newswire* (August 30, 2002); SBC's William Daley, letter to editor of *Cleveland Plain Dealer*(September 17, 2002).

[10] *Detroit News Editorial*, (October 3, 2002).

[11] ARMIS, 43-02, acct 178, net income; acct 48, total operating revenue.

[12] *Id.*

[13] *Crains Detroit Business*, Amy Lane, (September 17, 2002).

[14] Randall Stephenson, CFO of SBC, Speaking at Bank of America Securities Annual Investment Conference, Sept. 23-26, 2002.

moving target, and should raise serious doubt as to what "cost" really means to SBC. This disparity highlights the falsehoods of SBC's claims.[15]

SBC's Misrepresentations Are Not Confined to UNE Costs: Service Quality. According to a February 8, 2002 Press Release, SBC Ameritech Michigan claimed that it had dramatically improved service quality in 2001, claims made in other Ameritech states.

The Facts: SBC Ameritech has maintained one of the poorest service quality records of any RBOC. Per ARMIS data, SBC Michigan "initial out-of-service repair interval" worst in U.S.: SBC Michigan 36.1 hours; BellSouth 19.2; Qwest 14.1; SWBT 23.6; Verizon 21.2. Ameritech Michigan customer complaints per million lines have been the highest of any RBOC: SBC Michigan 425; BellSouth 232; Qwest 228; SBC 181; Verizon 185 and residential and commercial customer satisfaction surveys also rated Ameritech Michigan also the worst. These indicators beg the question, if SBC has been enjoying significant profitability, why has its service quality performance been so abysmal?

CLEC Competition in Michigan. SBC recently testified that "as of September [2002], there are 75 different CLECs operating in our service territory in Michigan."[16]

The Facts: The Michigan Public Service Commission has found that the top 15 CLECs in Michigan represent 96% of the CLEC lines.[17] It is currently estimated that there are currently approximately 20 CLECs now operating in Michigan.

Facilities-Based Competition. SBC claims that Michigan facilities-based CLECs "have the capability today to address... 82 percent of our business customers and 76 percent of our residential customers."[18]

The Facts: SBC also admits that "CLECs are collocated in approximately 125 SBC Ameritech wire centers in the state of Michigan, or about a ***third*** of all wire centers."[19] Competitors have demonstrated that the real number of collocations capable of ***local dial tone*** is about 65, or a ***sixth*** of all wire centers. [20]

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[15] SBC's "costs" contain an implicit profit margin. Where competitive companies like LDMI typically experience *net* profit margins of approximately 10%, SBC would maintain that it is entitled to margins, whether explicit or implicit, significantly in excess of 10%, thus inflating its own estimates.

[16] *In the matter, on the Commission's Own motion to consider Ameritech Michigan's Compliance with the Competitive checklist in Section 271 of the federal Telecommunications Act of 1996,* Michigan Public Service Commission, Case No. U-12320, ["Michigan 271 Proceeding"] (November 25, 2002).

[17] Michigan Public Service Commission, Competitive Market Conditions Update (October 2002)

[18] *Id.*

[19] *Id.*

[20] Testimony of Jerry Finefrock, "Michigan 271 Proceeding"

Significant Rate Reductions. In a June 11, 2002 Press release SBC claimed that it would save Michigan subscribers $26 Million by converting customers to unlimited local service; overall price reductions of 30%.

The Facts: SBC's $26 million Michigan rate reduction was accompanied by request to hike directory assistance rates which effectively canceling the savings. But even taken at face value, $26 million represents only **eight-tenths of one percent** of SBC's annual revenues in Michigan: $3.465 billion per the ARMIS data base. Only 4 percent of SBC's Michigan customers received the rate cut. And because vast majority of SBC's customers didn't make more than 400 local calls per month, the threshold for cost savings, they received no savings whatsoever in being converted to a flat-rate service.

Ameritech Michigan's local phone prices over last 10 years have increased more than other RBOCs: Ameritech Michigan: 38%; Qwest 25%; Verizon, (7%).[21] FCC "sample cities" data, last 10 years: Michigan cities, 41.7% increase; rest of U.S., 6.1% increase.[22]

The Commission has had to consider incumbent claims of below cost UNE-P pricing as an underlying theme permeating the *Triennial Review*. The Commission has also had to consider RBOC assertions regarding their track records in meeting statutory obligations for in-region interLATA market entry. RBOC rhetoric in both arenas paints a picture of stellar performance and a dedication to customers. The facts, however, should raise significant concern over many RBOC claims. Even assuming *arguendo* that these claims are true, there must be an objective, fact based process for proving or disproving actual performance. This, in part, has lead to the development of performance metrics and performance assurance plans associated with incumbent interLATA market entry. The need for objective fact-based impairment evaluation criteria should be implemented as well. In a related *Letter of Ex Parte Participation*, LDMI has expressed its support of UNE-P transition plans which include just such fact-based criteria. The potential for RBOC exaggeration and falsehoods, as related herein, should underscore the importance of adoption of those plans.

Sincerely,

LDMI TELECOMMUNICATIONS, INC.
/s/ Jerry Finefrock

Jerry Finefrock
Vice President Regulatory Affairs

Attachments

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[21] ARMIS 43-03 table I, account 5000, local services revenue; 43-08, table II, total switched access lines.

[22] Table 1.4, Reference Book of Rates, Price Indices.. for Telephone Service, Industry Analysis and Technology Division, FCC, July, 2002: weighted by population data from U.S. Census for each city, 2000 census data; SBC Ameritech Michigan compared to rest of U.S. outside of Ameritech region. For the remainder of Ameritech states, the increase over the 10-year period was 11.3%.

Listing of Attachments

1. LDMI Special Access Rulemaking Comments

2. Finefrock Michigan Testimony

3. *SBC on UNE-P and TELRIC: Claims Must Be Compared To Their Track Record,,* Jerry Finefrock, Power Point presentation (December 19, 2002)

4. Top 30 Companies, Fortune 500 List (Spreadsheet)

5. Calendar Year 2001 RBOC Financials (ARMIS Data Base spreadsheet)

6. Calendar Year 2001 Ameritech Financials (ARMIS Data Base spreadsheet)

7. Ameritech After Tax Profit Margin Profit Margin Comparison (ARMIS Data Base spreadsheet and Word versions)

8. In FCC "Sample Cities" Data, Last 10 Years (ARMIS Data Base spreadsheet)

9. *PSC stops SBC Ameritech's plan to raise rates for competitors,* Amy Lane, *Crain's Detroit Business* (December 17, 2002)

10. *Ameritech may charge rivals double, Rates now below cost, chief says*, John Van, *Chicago Tribune* (September 4, 2002)

11. *Phone rate hike sought Ameritech's competitors' access fee would double,* Amy Lane, *Crain's Detroit Business* (September 2, 2002)

12. *SBC seeks to raise line fees, Rival says lease request unjustified*, Jeff Bennett, *Detroit Free Press* (August 31, 2002)

13. *Don't Force Ameritech to Subsidize Competitors, The Detroit News* (October 3, 2002)

14. Reporter's Notebook: Regulatory and Policy, Glenn Bischoff, TelephonyOnLine.com (September 6, 2002)

15. *FCC Stats Refute RBOCs' Plea for Relief*, Glenn Bischoff, TelephonyOnLine.com (December 16, 2002)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
AT&T Corp.	)	RM No. 10593
Petition for Rulemaking To Reform Regulation Of Incumbent Local Exchange Carrier Rates For Interstate Special Access Services	)	

COMMENTS OF LDMI TELECOMMUNICATIONS, INC.

LDMI Telecommunications, Inc. ("LDMI"), by its attorneys, hereby submits its comments in support of the above-captioned petition filed October 15, 2002 by AT&T Corp. ("AT&T"),[1] and states as follows:

INTRODUCTION

LDMI is a competitive provider of telecommunications services headquartered at Hamtramck, Michigan. Although established initially in the early 1990s as a provider of interexchange services, LDMI has evolved into a full service telecommunications provider offering customers competitive local exchange voice and data services as well as long distance services. Indeed, LDMI is an Integrated Communications Provider (ICP). That is, it offers to consumers of all sizes – business and residential – solutions to their

[1] By Public Notice issued October 29, 2002, the Commission invited comments on AT&T's petition. See Public Notice – Wireline Competition Bureau Seeks Comment on AT&T's Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, DA 02-2913.

telecommunications requirements without regard to the market segmentation definitions such as local exchange, intraLATA, interLATA, exchange access, voice, data, intrastate and interstate – which have their genesis in an earlier era and which are based on regulator-created service boundaries which the 1996 Telecommunications Act was enacted to eliminate.

Like virtually all ICPs, including those still branded with the labels "CLECs" or "IXCs", LDMI is dependent on access to essential facilities and services provided by incumbent local exchange carriers (ILECs), including the largest of the ILECs – the Bell Operating Companies (BOCs). With the largest portion of its customer base located in Michigan, its headquarters state, LDMI is especially dependent on SBC Corporation's Ameritech Michigan affiliate for such services and facilities.

LDMI and other competitive ICPs do not enjoy the benefit of owning ubiquitous networks extending to each customer's premises built over many decades with monopoly ratepayer-funded dollars. For that reason, LDMI, like other competitive providers, must utilize such connections of the incumbent companies. Under the current regulatory environment established by the Commission, when those connections and transport facilities are used to provide what are perceived to be "local" service, they are called Enhanced Extended Links, are provided as Unbundled Network Elements subject to Section 251(c)(3) of the Communications Act of 1934, as amended,[2] and are priced based on the Total Element Long Run Incremental Cost (TELRIC) methodology promulgated by the Commission and implemented by the state commissions (including the Michigan Public Service Commission). When those same facilities are used for the

[2] 47 U.S.C. § 251(c) (3).

origination or termination of services labeled as long distance service, they are called "Special Access" and are priced in accordance with rules and policies established by the Commission for access services.

Notwithstanding the facts that the facilities are physically and operationally identical and that the historic distinction between "local" and "long distance" telecommunications is rapidly eroding, the regulatory construct currently applicable to these facilities causes dramatic price differences depending on whether they are provided as Unbundled Network Elements or as Special Access. As a provider of competitive local exchange and interexchange services, LDMI is disappointed that the Commission has chosen to restrict the availability of EELs at TELRIC-based prices and urges the Commission to revisit that issue at the earliest opportunity. These comments, however, are directed at the specific special access pricing issues raised in AT&T's petition for rulemaking – a petition which LDMI enthusiastically supports.

I. The Unintended Consequences of Deregulated Special Access Rates Combined With Limitations on the Availability of Loop and Transport Combinations at TELRIC Prices Has Created a Price Squeeze Which Has Undermined Development of Competing Networks

Underlying AT&T's petition for rulemaking is one simple premise based upon irrefutable factual evidence: the Commission's 1999 decision to "deregulate" incumbent local exchange carrier special access services based upon anticipated competition in the provision of those services has not produced the anticipated results. In its Pricing Flexibility Order,[3] the Commission granted the wish of the major ILECs, including the Bell Operating Companies in general and Ameritech in particular, to be relieved of price

[3] Access Charge Reform, *et al*, 14 FCC Rcd 14,421 (1999), *aff'd. sub nom.* WorldCom, Inc. *et al* v. FCC, 238 F. 3d 449 (D.C. Cir. 2001).

cap regulation of their special access rates based not upon any demonstration that they were subject to actual competition and no longer possessed market power in those services, but rather based on a "proxy" for erosion of market power, *i.e.*, that other providers had collocated in those companies' central offices anywhere within a Metropolitan Statistical Area (MSA). In the Pricing Flexibility Order, the Commission made the predictive judgment that such collocation would act to restrain the prices for special access services and that market forces would be sufficient to protect consumers and ensure rates that are just and reasonable.

Unfortunately, as AT&T's petition and supporting documentation demonstrates and as LDMI has learned all too well, however reasonable the Commission's predictive judgment may have been in 1999, those predictions have not been borne out by actual experience in the marketplace. What has occurred since 1999 with respect to special access pricing is well-documented and uncontradicted. Special access rates have spiraled upward to exorbitant levels.

As noted by AT&T, the Bell Operating Companies' rates of return on special access services, based on ARMIS data on file with the Commission, are outrageous. None are more outrageous than the return levels of SBC Corporation – parent of Ameritech Michigan, which is LDMI's primary vendor of special access services. According to that data, in 2001, SBC earned a return on special access of nearly fifty-five percent![4] Such outlandish returns are understandable when one considers the rates which are charged by Ameritech Michigan for special access. In November 2001, LDMI's Senior Director of Regulatory Affairs, Jerry W. Finefrock, submitted testimony on behalf

[4] AT&T Petition at 8.

of the Competitive Local Exchange Carriers Association of Michigan and several of its member companies in a formal complaint proceeding before the Michigan Public Service Commission.[5] In his testimony, Mr. Finefrock described Ameritech Michigan's pricing behavior and provided graphic and compelling examples of how excessive are those rates. For example, Mr. Finefrock indicated that Ameritech Michigan's standard rate for an eighteen mile DS-1 facility provided pursuant to its special access tariff on file with the Commission is $1,129.16 per month, with an installation charge of $1,493. If a customer elects to obtain that facility subject to a five year service commitment (thereby foregoing any opportunity either to construct its own facilities or to consider other suppliers for a five year period without incurring burdensome termination charges), the monthly charge would be $502.86 with an installation charge of $50.00. Incredibly, the identical facility is made available to certain end users and Internet Service Providers in Michigan at a rate of $195 per month with no installation charge. Other examples of excessive ILEC special access prices both within and outside Michigan abound.

When a company which enjoys a *de facto* monopoly in the provision of an essential service is permitted by a Commission regulatory policy based upon predictive judgments and proxies for actual competition to charge potential competitors and captive customers nearly six times what it charges selected customers (not considered to be CLECs or IXCs) for the identical facility or service, albeit it with a different name, and those customers have no alternative source for obtaining such facilities or services, it is

[5] Case No. U-13193 In the matter of the complaint of the Competitive Local Exchange Carriers Association of Michigan, CMC Telecom, Inc., Long Distance of Michigan, Inc., McLeod USA Telecommunications, Inc., MichTel, Inc., and the Association of Communications Enterprises against Ameritech Michigan for anticompetitive acts and acts violating the Michigan Telecommunications Act.

no wonder that the company is able to enjoy a rate of return in excess of fifty percent. As AT&T's petition notes, ILEC special access pricing under the Commission's Pricing Flexibility Order epitomizes the very sorts of "creamy returns" which the U.S. Court of Appeals for the District of Columbia Circuit has found so inappropriate.[6]

The fact that the market forces anticipated by the Commission in 1999 to somehow discipline special access pricing have not had that effect is well-documented and is beyond serious question. However, the importance of revisiting the need to appropriately regulate special pricing and to impose a regulatory regime which will ensure rates which are just and reasonable and which are not unreasonably discriminatory is about far more than just preventing monopolists' ability to enjoy "creamy returns." It is also about promoting competition and achieving the public interest objectives underlying the Telecommunications Act of 1996 as well as the Commission's own often-stated goals.

As noted above and as has been explained by AT&T, special access services are physically and operationally identical to EELs with the difference being EELs are, pursuant to Commission rule, to be used for "local" competition, whereas special access is to be used for origination and termination of "interexchange" traffic. There no longer is such a "bright line" between local and interexchange markets – except perhaps in Commission regulatory requirements. In the real world, customers demand solutions to all of their telecommunications needs, and carriers seek to fulfill those needs. These customer demands and expectations have led to the emergence of the ICP concept of service provider. When LDMI wishes to acquire "last mile" facilities from Ameritech

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[6] Farmers Union Credit Exchange, Inc. v. FERC, 734 F.2d 1486, 1502-1503 (D.C. Cir.

Michigan so that it can serve a customer beginning at the customer's premises, it does not do so for the specific purpose of being the customer's long distance carrier or the customer's local exchange service provider. It does so for the purpose of being the customer's service provider, without regard to distance.

Without its own connections to each and every customer premises, LDMI, like all other non-ILEC telecommunications service providers, is necessarily reliant on access to the ILEC's connection to that customer in order to serve the customer. Notwithstanding any predictions, speculations, or expectations that the Commission might have harbored in 1999, the simple and undeniable fact is that now and for the foreseeable future, LDMI and similarly-situated ICPs have no other source for those "last mile" connections to their customers. That is true irrespective of whether the customer will use LDMI's service for long distance calling, for local exchange calling, for voice or for data, or, as is the situation for many of its customers, for all of its telecommunications needs without regard to service labels. Nothing in the 1996 Act or its legislative history indicates that Congress' intent in requiring the ILECs to open their networks and to allow competitors to use those networks on an unbundled element basis to compete with those companies was to be limited to services that the Commission considers to fall on the "local" side of the local/long distance "bright line" – a line which no longer exists in the real world.

The distortion of the 1996 Act described in the preceding paragraph is amplified by the fact that the special access rates which LDMI and other ICPs are required to pay for those "last mile" connections are essentially deregulated, unrestrained by market

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1984).

forces, and are yielding returns of more than fifty percent in some cases for those companies who are allowed to charge those prices.

In the nearly seven years since enactment of the 1996 Act, much has been written and said about the importance of facilities-based competition. LDMI concurs that in the long run, competition to serve customers over alternative networks will produce the important public interest benefits of lower prices, increased choice and improved service quality. However, in determining when unbundled network elements should be available from ILECs and how special access should be priced, the Commission should realize that facilities-based competition does not occur simply by passing legislation and announcements that government regulators favor it. It takes time and capital to construct competing networks. Investors need incentives to commit the resources to build those networks. As noted in AT&T's petition as well as in Mr. Finefrock's November 2001 testimony in the Michigan PSC proceeding, today those incentives do not exist. To the contrary, the current "price squeeze" sanctioned by the Commission has created enormous disincentives to invest in competing networks.

Under the current regulatory environment, the BOCs, including, for example, Ameritech Michigan, and other ILECs, have the ability to demand unregulated high rates for those "last mile" special access facilities while, at the same time, offering physically and operationally identical services and facilities to "ordinary" customers (*i.e.*, anyone other than a customer deemed to be an "IXC" purchasing the service for long distance access) at far more favorable prices. Ameritech Michigan and others have exploited this opportunity by offering favorable pricing to those "ordinary" customers willing to commit to long-term agreements. Once a customer is effectively "locked in" to the

incumbent's "last mile" facility for five years or more, there is no opportunity for other vendors to compete for those customers' business. With the customers effectively precluded from moving their traffic, there is no economic justification for other vendors, including ICPs, to invest in constructing competing networks. The inevitable consequence of this price squeeze created by the interplay of 1) favorable pricing for preferred customers, 2) limitations on EELs which render them unavailable for most ICPs, and 3) unregulated special access rates yielding "creamy returns," has impeded the development of the facilities-based telecommunications service competition (without regard to service category or distance) which the 1996 Act was intended to foster.

Ideally, all three factors enumerated above which have created the price squeeze and discouraged investment in alternative networks would be addressed in a simultaneous manner. LDMI recognizes that such simultaneous treatment of multiple facets of the same problem may not be feasible. Accordingly, LDMI respectfully urges the Commission to at least start the process by addressing one of those facets: the excessively high special rates being charged by Ameritech Michigan and other ILECs in the wake of the Commission's Pricing Flexibility Order, and the unintended consequences of that order.

II. The Commission Has the Authority and the Statutory Responsibility to Revisit the Appropriate Regulation of Special Access Rates Based on Current Circumstances and To Establish Interim Rates Pending Completion of that Review

AT&T's petition requests that the Commission commence a rulemaking proceeding for the purpose of reforming and tightening the regulation of price cap ILECs' special access services. As described above, the current system of allowing pricing flexibility based on proxies for competition which have proven unreliable has led

to rapidly escalating prices for what remain monopoly services, and have had the perverse effect of actually impeding development of facilities-based competition. There is a demonstrable need to revisit the Pricing Flexibility Order and the rules promulgated therein regarding special access pricing.

Those entities who most benefit from those rules, *i.e.*, the price cap ILECs, can be expected to oppose AT&T's petition by characterizing it as an untimely petition for reconsideration of the Pricing Flexibility Order. It is nothing of the sort. Rather, the Commission is being asked to determine what is the most appropriate means for regulating special access pricing to ensure lawful rates based on current circumstances – not based on circumstances that the Commission in 1999 thought might occur in the future. Adjusting rules and policies based on current conditions is neither improper nor unusual and is indeed a essential aspect of the administrative process. As Judge Harold Leventhal of the U.S. Court of Appeals for the District of Columbia Circuit stated long ago in a different, but analogous, context, "a month of experience will be worth a year of hearings."[7]

Significantly, the rules adopted in the Pricing Flexibility Order were adopted without the benefit of any hearings. More importantly, the telecommunications industry and the Commission have had many months of experience (more than three years' worth of experience) since those rules were promulgated in 1999. Moreover, the American Airlines court expressly recognized that regulatory agencies have an obligation to make re-examinations and adjustments to their rules and policies in the light of experience.[8]

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[7] American Airlines, Inc. v. CAB, 359 F.2d 624 at 633 (D.C. Cir. 1966).

[8] *Id., citing to* National Broadcasting Co. v. U.S. 319 U.S. 190 (1943) and United States v. Storer Broadcasting Co., 351 U.S. 192 (1956).

The experience gained in the area of special access since 1999 includes substantial rate increases, poor service, "creamy returns" as high as fifty percent or greater, and captive customers who have no competitive alternatives to those services. Consideration of rules and policies that are appropriate for special access pricing based on that experience is long overdue. LDMI concurs with AT&T that a rulemaking proceeding looking toward the establishment of pricing rules for special access which will ensure lawful rates should be undertaken immediately.

Although LDMI urges the Commission to begin the rulemaking process forthwith, it recognizes that the rulemaking process takes time. A notice of proposed rulemaking must be issued, comments and reply comments filed, and the Commission staff must review and analyze the extensive record likely to be compiled in that proceeding, rules must be crafted, and a report and order written to be considered by the Commission. It is unlikely that this process could be completed in less than a year – perhaps longer. For that reason, LDMI shares AT&T's concern that immediate interim action to stop the rapid escalation of special access prices must also be taken. While there may be other possible interim solutions, an interim prescription based on an 11.25 percent rate of return has merit and should be considered to adoption.[9]

[9] The Commission's authority to mandate interim rate level ceilings has been long acknowledged and well-documented. See, *e.g.*, Lincoln Tel & Tel. Co. v. FCC, 659 F.2d 1092 (D.C. Cir. 1981).

CONCLUSION

For the reasons stated in these comments, LDMI supports AT&T's petition for rulemaking and respectfully asks that the Commission commence a rulemaking proceeding to re-examine the appropriate means for ensuring just and reasonable special access rates, and that it implement an interim prescription based on a 11.25% rate of return for special access.

Respectfully submitted,

LDMI TELECOMMUNICATIONS, INC.

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Its Attorneys

December 2, 2002

EXHIBIT 2

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the complaint of the Competitive Local Exchange Carriers Association of Michigan, CMC Telecom, Inc., Long Distance of Michigan, Inc., McLeodUSA Telecommunications, Inc., MichTel, Inc., and the Association of Communications Enterprises against Ameritech Michigan for anticompetitive acts and acts violating the Michigan Telecommunications Act.	)	Case No. U-13193

DIRECT TESTIMONY OF JERRY W. FINEFROCK

IN SUPPORT OF COMPLAINT

November 15, 2001

DIRECT TESTIMONY OF JERRY W. FINEFROCK IN SUPPORT OF COMPLAINT

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Jerry W. Finefrock. I am employed by Long Distance of Michigan, Inc. ("LDMI"), a competitive local exchange telephone service provider ("CLEC") licensed and operating within the State of Michigan. My business address is 8801 Conant Street, Hamtramck, Michigan.

Q. ON WHOSE BEHALF ARE YOU TESTIFYING?

A. I am authorized to present this testimony in support of LDMI, the CLEC Association, and the other parties to this complaint. I have also been authorized to submit this testimony by the CLEC Association's Board of Directors.

Q. PLEASE BRIEFLY DESCRIBE THE BUSINESS OPERATIONS OF LDMI.

A. Starting as a small long distance telephone company in Michigan in the early 1990s, LDMI has grown to become the largest telecommunications company headquartered in Michigan: an integrated communications provider which supplies long distance, local, data and other services to many tens of thousands of business and residence customers in Michigan and throughout the Midwest.

Q. WHAT IS YOUR CURRENT POSITION AND WHAT ARE YOUR CURRENT DUTIES WITH LDMI?

A. My current position is Senior Director of Regulatory Affairs. My current responsibilities include overseeing issues and matters in the legal and regulatory environment of telecommunications.

Q. DO YOU SERVE THE TELECOMMUNICATIONS INDUSTRY IN ANY OTHER CAPACITY?

A. Yes. I also serve on the Board of Directors of the Competitive Local Exchange Carriers Association of Michigan ("LDMI"), a trade association representing the interests of competitive local exchange carriers in this state.

Q. PLEASE DESCRIBE YOUR EXPERIENCE IN THE TELECOMMUNICATIONS INDUSTRY.

A. In 1974, I joined Southern Pacific Communications Co. ("SPCC" -- later to be known under the name "Sprint"). My initial assignment included providing technical network analysis support to the west coast field sales organization of SPCC, regarding large customer communications networks, such as tandem tie line, and CCSA, based on my prior telecommunications consulting and teletraffic engineering experience. In 1975, I was promoted to Manager of Network Analysis for the SPCC marketing organization nationwide. Subsequently, during my continued tenure with SPCC ending in February 1983, I managed the Network Planning organization, which handled network traffic planning and network traffic routing for the SPCC switched services network nationwide. In my last year at SPCC, I was head of the voice communications Product Planning

organization for the company, and all Marketing department personnel for what was now generally known as "Sprint" reported to me.

In early 1983, I accepted the position of Vice President, Network Planning for Lexitel, Inc., a long distance company headquartered in Bingham Farms, Michigan in the Detroit area, responsible for planning the network and optimizing service quality and network costs. I continued in this position for Lexitel, and following the merger of the company with Allnet, as Vice President of Network Planning for ALC Communications Corp., headquartered at the same location, through my departure from ALC in late 1989. In late 1989, I began work on a new long distance company, which I incorporated in the State of Michigan in May 1990, under the name Long Distance of Michigan, Inc., and which subsequently became generally known as "LDMI". I served as President and CEO of the company during its formative stage, and continued in that role as the company turned up its first customer in June 1992, and up through the growth of the company to about 20,000 customers and about $18 million of annualized revenue, in January, 1997. Following a short retirement, and a role as a consultant to the company, I returned to full-time employment with LDMI as Sr. Director of Regulatory Affairs, in the year 2001.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to support the complaint filed by CLECA and the individual companies and organizations listed relating to the various anticompetitive acts and practices being used by Ameritech to thwart competition, the deliberate roadblocks to competition and other barriers to entry anticompetitive acts and practices used by Ameritech, and to indicate the urgency of the relief requested by the Complainants.

Please note that while my testimony is submitted in support of the claim filed by the CLEC Association and other parties, including LDMI, LDMI retains the right to pursue damages for company-specific matters in its own complaint proceeding, if it should choose to file a complaint.

INTRODUCTION

LDMI'S ATTEMPTS TO COMPETE AND TO ENLIST THE COMMISSION'S ASSISTANCE IN ENFORCING COMPETITION IN MICHIGAN

Q. ARE YOU FAMILIAR WITH THE COMPLAINANT'S MOTION FOR IMMEDIATE RELIEF?

A. Yes. I support that motion, and I am familiar with the facts supporting the motion. In particular, I participated when LDMI Telecommunications met with the Commissioners and Staff and made PowerPoint presentations on Michigan UNE-P barriers to entry on December 4, 2000, March 5, 2001 and September 17, 2001.

Q. WHAT ISSUES DID YOU REPORT TO THE COMMISSIONERS?

A. The issues reported by LDMI to the MPSC on December 4, 2000 included (a.) the lack of effective "new combinations" pricing and availability, or fully-effective "ordinarily combined" or "currently combined" standards, that can allow LDMI to effectively market UNE-P service; (b.) critical gaps in the Ameritech UNE-P product offering, such as Voice Mail, which [we now assert] is an illegal tying strategy of Ameritech; (c.) various documented efforts by Ameritech to make it difficult or impossible for LDMI to

successfully provision UNE-P service in Michigan; and (d.) horrendous Ameritech repair results on resale and UNE-P service.

Q. DID YOU STRESS THE NEED FOR IMMEDIATE ACTION?

A. Yes. At the December 4, 2000 meeting, LDMI indicated it needed quick action on these issues by the MPSC, suggesting it needed serious action within "30 days" because investors know of the Michigan UNE-P problems, and critically needed new investment was dependent on being able to show that the barriers have been removed.

Q. IS THERE STILL TIME FOR THE COMMISSION TO ACT TO SAVE THE CLEC INDUSTRY?

A. Yes. The opportunity for the MPSC to address these issues still exists, and the opportunity still exists for the MPSC to help strike down the remaining barriers to entry on UNE-P in Michigan, but that opportunity will not remain for much longer. LDMI is now in the process of re-evaluating its UNE-P sales and provisioning resources, shifting resources out of states where UNE-P barriers still exist, and into states where UNE-P and other monopoly barriers are being knocked down by state regulators. LDMI has been pleased by recent regulatory initiatives and progress in Illinois, among other states.

SETTING THE STAGE
THE WEALTH AND POWER OF SBC/AMERITECH

Q. ARE YOU FAMILIAR WITH THE PROBLEMS OF COMPETING WITH AMERITECH?

A. Yes, I am. I have competed with Ameritech for several years.

Q. ARE YOU AWARE OF THE FINANCIAL POWER OF AMERITECH AND THE USE OF THAT FINANCIAL POWER IN COMPETING WITH CLECs?

A. Yes, I am.

Q. IN PAST DEALINGS OR IN PAST PROCEEDINGS, HAS AMERITECH ARGUED THAT REMEDIES PROPOSED BY CLECS WILL JEOPARDIZE AMERITECH'S REVENUES AND PROFITS?

A. Yes.

Q. SHOULD THE REMEDIES PROPOSED IN THIS COMPLAINT RAISE ANY SUCH REVENUE OR PROFIT CONCERNS FOR THE COMMISSION?

A. No. Nothing could be further from the truth. SBC is a company of immense, almost unparallelled wealth and power. Despite whatever action the MPSC may take to reduce intrastate DS1 prices, or other downward revenue effects upon Ameritech Michigan as proposed in this Complaint, the best the Commission can hope for is to reduce Ameritech Michigan profits from outrageous to outlandish. The Commission will remember well what happened after Michigan enacted, in 1995, telecommunications legislation favored by Ameritech. One recent and well-researched study[1] notes as follows:

[1] Michigan Alliance for Competitive Telecommunications, *Promises Made, Promises Broken: How Ameritech Took Advantage of Deregulation In Michigan During the 1990s*, July 24, 2001, page 1. Copy available at http://www.miact.org/news/Ameritech-MI.pdf.; [hereinafter, *Promises Made; Promises Broken.*]

> "Throughout the last decade Ameritech [Michigan] aggressively lobbied for reduced regulation... Ameritech's wishes came true in 1995, when legislation [very much to Ameritech's liking] was passed...Over the last ten years, particularly since 1995, Ameritech made massive cuts in its investments and workforce Deteriorating service quality, which has harmed consumers, has also frustrated effective use of the Ameritech network by potential competitors, extending monopoly control of the local phone market. Meanwhile, the company posted record high returns on investment... ...Ameritech [Michigan], relative to the other Regional Bell Operating Companies (RBOCs), spent insufficient sums on infrastructure. Ameritech also witnessed profits far above the industry average... Ameritech's earnings for the period significantly outpaced other RBOCs... This suggests that Ameritech diverted funds needed to maintain the local telephone infrastructure and provide quality service in order to boost profits at the expense of consumers in Michigan and other states in the region... From 1995 to 1999, Ameritech's return on equity averaged 44.6% -- more than double its industry counterparts."

The [after-tax] Profit Margin of Ameritech Michigan was about 11 percent in 1991, rising to an amazing 17 percent by 1995.[2] Meanwhile, Ameritech Michigan's Return on Equity, which was 14 percent in 1991, rose to an incredible 41 percent by 1995. By contrast, over the period of 1991 through 1995, SBC's Return on Equity never exceeded 14.3 percent.[3]

Q. SINCE THE 1995 CHANGES TO THE MTA, AMERITECH HAS MERGED WITH SBC. WHAT HAS HAPPENED SINCE THEN?

A. SBC liked the Ameritech story so much that it bought the company. And, almost immediately, it took action on two fronts: (1.) it made further and huge cuts in the size of

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[2] Charles Van Eaton and Gary Wolfram, "Removing Barriers to Competition in Local Exchange Phone Services in Michigan: An Economic Analysis and Recommendations for Change," Hillsdale Policy Group, April 15, 1998. Copy attached as Exhibit JWF-1 (C-__).

[3] *Promises Made; Promises Broken*, Table 24.

the Ameritech workforce, to further boost already outrageous profits; and (2.) it eliminated the individual-state 10-Ks and 10-Qs of Michigan Bell, and of the other four Ameritech "Bells", as filed with the Securities and Exchange Commission, thus rendering future and similar economic comparisons difficult if not impossible.

Q. WHAT WAS THE RESULT OF THESE ACTIONS BY SBC?

A. The fact that there is so miserably little SBC/Ameritech DSL service in Michigan can be traced directly to SBC's actions, along with the resulting rapid decline in Ameritech Michigan's service quality. For as SBC said in its Annual Report for the year 2000:

> "Service issues in Ameritech. As we continued to integrate Ameritech into the SBC family, unexpectedly large personnel departures[4] hurt service quality there. In September 2000 we launched service upgrades... But this effort was a drain on resources, and it forced us to delay aggressively rolling out DSL service in the Ameritech region."[5] [Footnote added.]

SBC's neglect of DSL in Michigan and the Ameritech region appears to be hand-in-glove with anti-competitive efforts by SBC throughout its 13-state region.

[4] The public must always guard against "SBC/Ameritech speak". The "large personnel departures" were of course *not* unexpected; they were the direct and deliberate result of SBC actions to substantially cut the Ameritech headcount. Early retirement and other means were used, which had the predictable and intended result of eliminating Ameritech's most experienced and knowledgeable employees – the ones who were the most expensive to SBC. SBC knew it was eliminating those with the most experience; it clearly planned to replace a few of them later, with new and much less expensive new employees. Had SBC been truly concerned as to the number of employees who were departing, it could have acted to end the "early retirement" and other actions sooner. It did not take such action, because clearly it did not wish to do so. SBC gained the huge financial windfall from the huge whack out of the Ameritech payroll cost, and associated disinvestment actions, and has paid essentially no penalty for having done so. The penalty has been paid by the customers of SBC/Ameritech in Michigan.

[5] SBC Communications Inc., Annual Report 2000, page 2.

Q. HAS HIGH PROFITABILITY FOLLOWED FROM SBC'S ACQUISITION OF AMERITECH?

A. SBC has been doing very well indeed, thank you. The following data, and comparisons, were obtained via the Charles Schwab Analyst Center, on the web, in early October, 2001[6]; Charles Schwab's data is supplied by Market Guide. SBC's Profit Margin[7], as measured in October, 2001, was a most impressive 15.5%[8]. Profits drive the huge valuations that U.S. corporations traditionally enjoy; the 15.5% SBC Profit Margin is nearly ***three times*** the average Profit Margin for the Fortune 500 for the year 2000 (6.18%),[9] and even stronger yet as compared to the 5.9% overall average which S&P shows for the overall market today. And as to Return on Equity, which for SBC in the 1990s ranged from a low of 10.6% to a high of 15.7%[10] as contrasted with Ameritech's

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[6] See Exhibit JWF-2 (C-__). Return-on-equity queries, and Market Capitalization queries were conducted the evening of October 1, 2001. Over the next several days (Oct. 2-3) , it was noted that SBC's profit margin was being recalculated, apparently with new data supplied by S&P, in a downward direction, and so Profit Margin results were re-queried on October 11, 2001. As of October 11, SBC's profit margin was shown as 15.5%, or nearly three times that of the stock market as a whole (profit margin data provided by S&P). The figures as of October 1 showed SBC's profit margin as 17.0%, or even dramatically higher than that of the overall market.

[7] Market Guide supplies a traditional definition for "Profit Margin": "Also known as Return on Sales, this value is the Income After Taxes for the trailing twelve months divided by Total Revenue for the same period and is expressed as a percentage."

[8] Charles Schwab Analyst Center, Company Compare function, data from Market Guide, www.schwabnet.com, data extracted the evening of October 1, 2001.

[9] Fortune Magazine, April 16, 2001, annual Fortune 500 data, page F-19.

[10] *Promises Made; Promises Broken*, Table 24, results for "Southwestern Bell (all states)".

44.6%[11], Charles Schwab Market Guide on October 1, 2001, citing data from Standard & Poor's, says SBC's Return on Equity is now 30.8%. (One could speculate that this is a result of the blending of Ameritech's roughly 45% Return on Equity, and SBC's roughly 15% Return on Equity, to produce a composite 30.8% ROE for SBC overall today.) This 30.8% ROE for SBC contrasts with a similar Return on Equity for the stock market[12], again per S&P data, of 13.7%. So SBC's Return on Equity is 230 percent higher than that of U.S. corporations overall. As the Charles Schwab Stock Analyzer notes, after its display of the SBC and Market Return on Equity Results, "Return on Equity (ROE) measures how well a company generates income on its shareholders investment. In its simplest form, ROE reflects a company's profit margin, its efficiency in the use of assets, and its financial leverage. In general, look for a return on equity higher than the industry average, indicating that the company is generating higher income on shareholder investment." And indeed, SBC's performance is stellar. Over most of the Twentieth Century, state and federal regulators acted to keep the return on investment of the local phone monopolies low, arguing that from their monopoly status, and low risk, relatively low authorized returns on investment percentages were warranted. Most often, the authorized return was well below 10%, and often, below 5%. But while SBC/Ameritech still has huge monopoly powers, and very low risk, its 30.8% Return on Equity gives evidence that SBC's power to earn excessive profits exceed all regulatory boundaries.

[11] *Promises Made; Promises Broken*, page 2.

[12] Charles Schwab Stock Analyzer, results generated via query on October 1, 2001. The notes indicate, "The Market represents the average of the companies in the S&P 1500 index".

Q. HOW DOES SBC'S RETURN ON EQUITY COMPARE WITH TELEPHONE RBOCS?

A. Again, SBC is doing very well, thank you. Verizon Communications, the most directly comparable RBOC, has an ROE of 14.7%, in the same data, less than HALF of SBC's ROE. Qwest, to its misfortune, has a *negative* ROE of –151.3% (Qwest gets arguably half of its revenues from "competitive" business lines, and isn't doing well financially in the competitive arena). BellSouth, sticking to its monopoly knitting, has an ROE of 28.7%. The overall conclusion: SBC is over-earning, by any reasonable standard, and this appears to be mainly due to huge Ameritech returns, and its scorched earth policies with Ameritech since the Ameritech acquisition. Charles Schwab's Market Guide on Oct. 1, 2001 shows SBC with a Profit Margin (after-tax net income, divided by revenues) of 17.0%, on revenues of $48.399 Billion, from which one can compute after-tax profits of $8.23 Billion. And how does that stack up against that of the other RBOCs and ILECs? Again using Market Guide data, SBC's current profit of $8.23 Billion is greater than the profits of Verizon Communications, BellSouth Corporation, Qwest, Alltel Corp., Telephone & Data Systems, CenturyTel Inc., Broadwing Inc. and Citizens Communications, ***combined.***

Q. HAS THIS HAD AN IMPACT ON SBC'S MARKET CAPITALIZATION?

A. Yes. Huge profits, and Wall Street's appreciation of those huge profits, results in a huge Market Cap (Market Capitalization) for SBC. Even though AT&T Corporation has substantially more annual revenues than SBC, SBC's Market Cap, at $158.4 Billion, is far, far greater than that of AT&T. SBC's Market Cap, at $158.4 Billion is, in fact,

greater than the combined Market Caps of AT&T, MCI WorldCom, and Sprint. SBC's Market Cap is also greater than that of any other RBOC or ILEC. But the SBC Market Cap – it's valuation by Wall Street based on its huge profits – is even greater than that.

Q. CAN YOU PROVIDE FURTHER PERSPECTIVE ON THIS?

A. Yes. SBC's Market Cap of $158.4 Billion is greater than the ***combined Market Caps*** of AT&T Corporation, WorldCom Group, Sprint FON Group, MCI Group, Global Crossing Ltd., Level 3 Communications, Metro One Telecommunications, McLeodUSA Inc, Allegiance Telecom, Inc., Metromedia Fiber Network, Net2Phone Inc., XO Communications, Inc., US LEC Corp., Covad Communications Group, Choice One Communications, Talk America Holdings Inc., Primus Telecommunications, Z-Tel Technologies Inc., Focal Communications, Mpower Holding Corp., Teligent, Inc., LecStar Corporation, Digital Broadband Network, DSL.net Inc., FiberNet Telecom Group, CoreComm Ltd., Metrocall Inc., Winstar Communications, USA Digital, eLEC Communications Corp., e.spire Communications, ChoiceTel Communications, Startec Global Communications, ICG Communications Inc., RSL Communications Ltd., VPN Communications Corp., Clariti Telecomm Intl., Teletouch Communications, Eagletech Communications, eSat, Inc., Cybertel Communications, Litewave Corp., Rhythms NetConnections, World Access Inc., Davel Communications, Internet Commerce & Comm., FutureOne Inc., STAR Telecommunications, Phone-Tel Technologies, U.S. Wireless Corp., Pacific Gateway Exchange, SA Telecommunications, GST Telecommunications, Convergent Communications, Digital Data Networks, Equalnet Communications, Northeast Digital Networks, USN Communications Inc., Quentra

Networks Inc., Incomnet Inc., USTel Inc., U.S. Digital Communications, Telecomm Industries Corp., and Telegroup. Inc.[13] Again, SBC's Market Capitalization, its value as set by Wall Street in appreciation of its huge profits, is greater than the Market Capitalization of all those companies ***combined***. SBC, just one RBOC serving just part of the country, has greater Wall Street value than all of the CLECs, all of the IXCs, all of the competitive carriers in the U.S., -- more than 60 competitive companies overall -- ***combined***. SBC has greater Market Cap than all of those competitive companies combined, with about $15 billion left over. And with that $15 billion, at their Market Cap prices, SBC could buy Broadwing, Nextel Communications, and AT&T Canada. That's the power of SBC. Therefore, there should no concerns about taking remedial actions that may result in a reduction of SBC's revenues or profits in Michigan. The requested actions could not possibly result in any danger to SBC's financial health.

COUNT I – COMPLETELINK AND SIMILAR TERM CONTRACTS

Q. ARE YOU FAMILIAR WITH THE TERM CONTRACTS THAT AMERITECH USES TO PROVIDE DISCOUNTS TO CUSTOMERS?

A. Yes, I am. These contracts take various names, including ValueLink, ValueLink Extra, ValueLink Extra Select, ValueLink - Option F, ValueLink - Option F Preferred, Enhanced Ameritech ValueLink Plus, CompleteLink, FeatureLink, SimpleLink, StraightRate, and EasyLink. In the complaint these contracts are generically referred to as "CompleteLink" for short, but the contracts share the same essential characteristics. I

[13] See Exhibit JWF-3 (C-__).

will also refer to all of these types of term contracts as "CompleteLink" contracts, but my references should be taken to include any of the above contracts as well as any additional term contracts that exist or may be introduced by Ameritech with the same characteristics as are being challenged in the complaint.

Q. WHAT CONCERNS DO YOU HAVE ABOUT THESE TERM CONTRACTS?

A. I have several concerns about these contracts. Primarily, I am concerned because Ameritech is using these contracts to extend its monopoly on local telephone service and to thwart competition for local customers before it can get a foothold in Michigan. Over the past several years, this Commission has taken various steps designed to insure that customers, in theory, have the opportunity to chose their provider of local telecommunications service. The operative phrase is "in theory". The reality is that a large number of customers of Ameritech Michigan have no choice. Due to long term contracts with exorbitant termination penalties, many of Ameritech's business customers must continue to use that company as their local exchange provider, despite the availability of more attractive alternatives if those termination penalties were not so severe. This case presents the Commission with the opportunity to bring competition to those captive customers.

Q. HAVE YOU READ MR. CHAMPAGNE'S TESTIMONY REGARDING THESE TERM CONTRACTS?

A. Yes, I have. LDMI has experienced the same circumstances as CMC in competing against these contracts.

Q. HAVE COMPLETELINK AND SIMILAR TERM AGREEMENTS HAD AN ADVERSE IMPACT ON LDMI AND ITS POTENTIAL CUSTOMERS?

A. Yes, they have. LDMI repeatedly comes across situations where the customer is tied into a CompleteLink or similar contract. In most situations, LDMI could offer significant savings to the customer, only to find out that the customer must wait out the remaining period of the contract or face huge penalties. So, the customer cannot get the savings otherwise available from LDMI. Then, the customer is approached again by Ameritech with a replacement discount, often less than the discount LDMI could offer, to enter into a longer replacement term contract. The customer is thus faced with the choice of paying huge penalties for savings from LDMI, waiting out the contract and foregoing any new discount until the contract expires, or signing a new term contract with Ameritech for a discount NOW rather than later, even though the discount from LDMI may be larger in the future. The customer often chooses to accept SOME savings NOW rather than wait for greater savings later. The result is that LDMI, or any other CLEC that could offer savings to the customer, is often frozen out from ever serving that customer. The inability of LDMI to approach the segment of the market that is locked into CompleteLink contracts adversely affects LDMI's ability to compete now, and it will only become worse in the future given Ameritech's ability to continue to string along customers to new contracts every couple of years.

Q. HOW WIDESPREAD IS THIS PRACTICE?

A. Very widespread. At this time, an estimated 80% of Ameritech's small business customers are tied in to CompleteLink or similar term contracts, thereby drastically reducing the available market of local service customers to competition.

Q. WHAT REMEDY SHOULD THE COMMISSION EMPLOY TO AID COMPETITION IN LIGHT OF THESE TERM CONTRACTS?

A. The CLEC Association recommends that the Commission order a 1-year "fresh look" period to begin at the time the Commission issues its orders in this case. By this I mean Ameritech should be required to adopt a fresh look period whereby CompleteLink customers (and other term contract customers) may elect to move to a CLEC for local telephone service without incurring any termination penalties. Long-term contracts entered into when a monopoly is in place can have the effect of locking up a market for an extended period of time and in some cases can prevent consumers from obtaining the benefits of a competitive local exchange environment. A fresh look can be an important step in furthering competition in Michigan by allowing CompleteLink customers to avail themselves of newly available competitive alternatives. Specifically, a fresh look opportunity would enable CompleteLink customers to take advantage of competitive alternatives that have become available since they entered into their existing long-term arrangements. At a minimum, the Commission should void the unreasonably harsh termination penalties recounted in Mr. Champagne's testimony and limit any termination penalties to either zero or to a reasonable tied to a portion of the savings the customer actually obtained or the costs actually incurred by Ameritech.

Q. HAVE OTHER STATES ADOPTED FRESH LOOK PERIODS?

A. Yes. Fresh Look periods have been ordered in Ohio, Connecticut, New Hampshire, and Kansas as well as in other places. In Connecticut, the "Fresh Look" period ended on June 30, 1998. Review of financial records submitted by SNET for the period indicated that the "Fresh Look" periods did not have a significant impact on the Telephone Company or the Corporation's payphone operation."[14] In the early 1990s, the FCC instituted a "fresh look" policy for Special Access and Private Line Interconnection. In 1994, the FCC, in report No. DC-2625 in CC Docket No. 91-141, reaffirmed its "fresh look" policy for special access expanded interconnection. There is ample precedent for a fresh look period for Michigan.

COUNT II – CENTREX CONTRACTS

Q. ARE YOU FAMILIAR FROM YOUR PERSONAL EXPERIENCE IN THE TELECOMMUNICATIONS INDUSTRY IN MICHIGAN WITH AMERITECH CENTREX OFFERINGS AND CENTREX CONTRACTS?

A. Yes, I am.

Q PLEASE PRESENT A BACKGROUND ON CENTREX CONTRACTS IN MICHIGAN.

A. Centrex service was originated by the Bell System in the early 1960s. It resulted from concerns that the Bell System-provided PBX systems in America could not obtain

[14] See SNET SEC Form 10Q, for the period ending June 30, 1998, at page 15, regarding implementation of the fresh look period.

modern telephone features such as direct inward dialing, call transfer, detailed billing by extension number, least cost routing, and a uniform nationwide dialing plan for calling from office to office. Those modern features were beginning to be offered on PBX systems manufactured in Europe, but Bell had nothing similar to offer. With the way that Centrex billing was set up by the Bell System, another important advantage was created for businesses or governments with "campus" type environments; that is, employees located in multiple buildings in the same telephone exchange. A particular feature of Centrex was to give the Bell System a huge advantage when it became permissible for a company or government entity to purchase its own PBX systems. The feature: there were no expensive "mileage" charges to interconnect the various offices together into one common system, using Centrex, as there were with all PBX systems. By contrast, if a company or government entity wanted to install a large PBX system at its main location, and link all the other offices together with PBX extensions off the main PBX, the costs of doing so were prohibitive under Bell System pricing. Such "off-premise" extensions (OPXs) were initially priced at dozens of dollars more per month, per PBX extension, than was the case with regular telephone lines.

Q. DID THIS HAVE AN IMPACT ON THE MANUFACTURERS OF PBX SYSTEMS?

A. Yes, it certainly did. And, as the Bell companies began to realize the advantage this gave them over competitors who wanted to sell competitive PBX systems, they moved the mileage charges for OPXs out of their PBX tariffs, and put them into their "private line" (or "special access") tariffs. Under private line pricing, the cost of the mileage charge for

just a single OPX line was from a hundred to several hundred dollars per month (and still is today, despite dramatic reductions in the cost of the involved electronics and transmission facilities). The Bell System got away with this maneuver, and still gets away with it today, in Michigan and all across the country. Centrex came to dominate the multi-campus environment. But at the time, it was only available to large corporations.

Q. WHAT OCCURRED AFTER THE DIVESTITURE?

A. Following Divestiture, Ameritech determined that since Centrex was the only "PBX"-like service it could offer, it would promote it to the hilt, and even offer it to very small business customers. With Centrex, a small business could avoid "OPX" costs; it could get dial transfer, conference calling, direct inward dialing, 4-digit (etc.) dialing among phone users, identified billing by Centrex extension, all for a fraction of the cost that these features were available to other Ameritech "business line" customers. And, importantly, these Centrex customers, small and large, could get "least cost routing."

Q. WERE OTHER SERVICES AVAILABLE TO BUSINESSES DURING THE TIME WHEN AMERITECH MARKETED ITS CENTREX SERVICES TO BUSINESSES?

A. Yes. During this same general time period, Ameritech began marketing Feature Group A. Feature Group A was essentially just an ordinary business line for outgoing calling, but one on which the cost of outbound toll calls to the home LATA was only about three cents per minute, rather than the 25 cents or more per minute for intraLATA toll which Ameritech business customers had to pay. Feature Group A was designed as an option

for IXCs to use as a dial-up platform to provide long distance calls to customers. However, in Michigan Feature Group A took up a unique niche in the competitive arena that still hampers competition today.

Q. WHAT IS UNIQUE ABOUT THE MANNER IN WHICH CENTREX WAS IMPLEMENTED IN MICHIGAN?

A. It is only in Michigan that the ILEC (Michigan Bell) authorized distributors and agents to package Feature Group A along with Centrex and the least-cost-routing and route-advance features of Centrex to provide a lethal package with huge intraLATA toll savings that managed to entice many many thousands of unsuspecting businesses to sign seven-year Centrex contracts in order to gain access to Feature Group A and the huge savings which at the time it provided. The decision to allow non-carriers to order Feature Group A was one that Michigan Bell, alone among the five Ameritech companies, allowed to happen. It was a decision unique not only among Ameritech companies, but Michigan was the only state in the U.S. where the RBOC, to sweeten its own desire for long-term customer contracts to lock down business customers, allowed Feature Group A to be sold to non-carriers.

Q. HOW DOES THIS COUPLING OF FEATURE GROUP A SERVICE WITH CENTREX SERVICE AFFECT COMPETITION IN THE LOCAL MARKET?

A. First, Feature Group A gave the Ameritech distributors and agents a huge opportunity, when coupled with the "least cost routing" they could get on Centrex. With any other phone system, the Feature Group A line would have to be terminated on a separate point

on the customer's phone system, and they would have to push a different button, or dial a different access code on the phone system, to get access to the Feature Group A line, which then might be busy when they tried to reach it. With Centrex's automatic alternate routing, the user didn't have to dial anything different to get the Feature Group A line(s) – this is done automatically by the Centrex. And, for those instances when the Feature Group A line or lines is/are in use, calls automatically "route advance" to the next least expensive route. Second, as with the CompleteLink contracts described earlier in my testimony and in Mr. Champagne's testimony, Ameritech used this opportunity to tie-up customers into extremely long-term Centrex contracts.

Q. HOW IS LDMI ABLE TO DETERMINE THAT AMERITECH HAS TIED UP THESE CUSTOMERS TO THE LONG TERM CENTREX CONTRACTS?

A. Ameritech today bills IXCs interstate PICC charges for all the business multi-line, Centrex, ISDN, and several other categories of "business" telephone line service. That billing is received by LDMI from Ameritech in the form of an electronic file, which contains, among other things, the involved telephone number, and the category of service (Centrex, Business Multi-line, etc.) as that line is classified and identified in Ameritech's billing records. The current number of "business" telephone lines within Ameritech's geographic territory and for which Ameritech is billing LDMI for interstate PICCs is in the vicinity of 100,000 business telephone lines. LDMI has conducted a study of that Ameritech PICC billing data for May 2001. The study determined that, of the total, an incredible 32.03% – or approximately one-third of the total -- are reflected in Ameritech Michigan's billing records as Centrex lines. LDMI's average business customer has from

5 to 7 local business or Centrex telephone lines, precisely the customers that would have the Feature Group A/Centrex advantage described above. LDMI serves small and medium sized businesses, who in the past were not likely to be candidates for Centrex service. But with the huge sales campaign waged by Ameritech, huge numbers of small businesses have been locked into the service on long-term contracts. And, of the LDMI business lines covered by these PICC charges, over 32% of them are Ameritech Centrex customers. LDMI serves customers in every exchange in the State of Michigan, from Adrian to Zeeland, and from the bottom of the state to the top of the U.P. As such, LDMI's customers should be representative of the Ameritech business base at large. For larger businesses than the average size of businesses in Michigan served by LDMI, the percentages on Centrex service are probably even larger than LDMI's 32%.

Q. WHAT DID LDMI'S STUDY REFLECT AS TO THE NUMBER OF CENTREX CUSTOMERS TIED TO LONG TERM CONTRACTS?

A. Currently, a small study by LDMI shows that of Centrex contracts reviewed for current LDMI customers or customer prospects in Ameritech territory, which are currently in effect, 53% of them have a term of seven years, 27% have a term of five years, and 20% have a term of three years.

Q. HAS AMERITECH USED LONG TERM CENTREX CONTRACTS TO THWART COMPETITION IN MICHIGAN?

A. Yes. Centrex contracts have large termination penalties similar to the termination charges imposed in CompleteLink and related contracts addressed in Count I. Centrex

contracts have also been used by Ameritech to extend its monopoly in the local service market in Michigan in the same manner in which CompleteLink contracts have been used.

Q. WHAT REMEDY SHOULD THE COMMISSION EMPLOY TO AID COMPETITION IN LIGHT OF THESE CENTREX TERM CONTRACTS?

A. As with CompleteLink contracts, the CLEC Association recommends that the Commission order a 1-year "fresh look" period to begin at the time the Commission issues its orders in this case. Ameritech should be required to adopt a fresh look period whereby long term Centrex customers may elect to move to a CLEC for local telephone service without incurring any termination penalties. In addition, the Commission should void the unreasonably harsh termination penalties contained in long term Centrex contracts and limit any termination penalties to either zero or to a reasonable tied to a portion of the savings the customer actually obtained or the costs actually incurred by Ameritech.

COUNT III – INADEQUATE QUALITY OF SERVICE

Q. HAS LDMI EXPERIENCED SERVICE QUALITY PROBLEMS WITH AMERITECH'S INTERCONNECTION SERVICES?

A. Yes. The service quality of Ameritech Michigan on local telephone services in the year 2000 was extraordinarily poor, and, as Doug Reid testifies, has not improved in 2001.

Q. YOU SAY AMERITECH CLAIMS SERVICE IS IMPROVING. ISN'T THAT THE CASE?

A. Certainly not. In claiming that it is now meeting the Commission's "36 hour" standard for repair intervals, Ameritech has deceived the MPSC and the public. During the year 2000, as all of Michigan knows, service quality problems throughout the Ameritech region were so bad that they reached historic proportions.[15] And among the five Ameritech states, those service quality problems were the worst in Michigan.[16]

Q. WHAT IS AMERITECH REPORTING TO THE PUBLIC REGARDING CHANGES IN SERVICE QUALITY IN 2001?

A. Despite the evidence of continuing problems, Ameritech acts as if everything has suddenly become fixed. Magically, mysteriously and mythically, for service performance so far in 2001, Ameritech claims that its service quality in 2001 is not only dramatically better than in 2000, but meets state service standards.[17] Indeed, Ameritech has started a media blitz to represent to the public that service quality has improved.

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[15] See for example, Brenda Rios, "Ameritech must answer for slow service repairs", Detroit Free Press, August 18, 2000; Francis X. Donnelly, The Detroit News, "Phone users rage against Ameritech", August 22, 2000; Associated Press, "Midwestern States Unite Against Ameritech", September 29, 2000, as reported at ClickOnDetroit.com, Detroit Channel 4 News; and Bennie M. Currie, Associated Press, "Regulators Pressure Ameritech to Fix Service Problems", Detroit News, September 30, 2000.

[16] MCTPA, Michigan Competitive Telecommunications Providers Association, *Talking Points Concerning Phone Competition*, 2001, www.mctpa.com/hints.html.

[17] On July 23, 2001, Ameritech Michigan said it "has exceeded key service quality measurements... meeting the state's key residential repair service metric of mean time to repair in 36 hours. The company repaired out-of-service customers in an average of 31 hours and 42 minutes in the second quarter", after also having met the standard in the first quarter, 2001.[17]

Q. ARE AMERITECH'S CLAIMS OF IMPROVEMENT LIMITED TO MICHIGAN?

A. No. On June 15, 2001, Ameritech Ohio said it had met most all of its "service quality benchmarks" for the period ending April 2001, and that for the February 2001 through April 2001 period, it had done best of all, restoring service within 24 hours some 85.5 percent of the time.[18] On July 23, 2001, Ameritech Indiana said it "has met or exceeded key service quality measurements and continues to improve its service to its residential and business customers.... [and] has exceeded quality standards in the second quarter of 2001...".[19] On July 24, 2001, Ameritech Wisconsin reported its "best May performance in more than five years in restoring 98 percent of all out-of-service repair cases and service interruptions to residential and business customers within 24 hours [and] within 24 hours 90.1 percent of the time on average in the second quarter of 2001."[20] And on July 26, 2001, Ameritech Illinois reported, "During the first half of 2001, Ameritech Illinois exceeded key service quality measurements and continued to improve service to residential and business customers... Ameritech has met its key measurement for restoring residential customer service every month in 2001. ICC standards require Ameritech to repair 95 percent of all out-of-service cases within 24 hours. Ameritech

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[18] Ameritech News Center, "Ameritech [Ohio] Meets Annual Service Quality Requirements", June 15, 2001, www.ameritech.com.

[19] Ameritech News Center, "Ameritech Indiana Keeps Improving Service", July 23, 2001, www.ameritech.com.

actually repaired out-of-service cases within 24 hours an average of 96.2 percent of the time during the first half of 2001..."[21]

Q. DO THESE STATEMENTS MATCH THE REPORTS OF ACTUAL SERVICE PROBLEMS OR THE FINDINGS OR CONCERNS OF REGULATORS IN THE AMERITECH STATES?

A. No. For example, Illinois Commerce Commission ("ICC") Chairman Richard L. Mathias sent a letter in January 2001 to state regulators in Indiana, Michigan, Ohio and Wisconsin asking if it would be appropriate to ask SBC chairman and CEO Edward E. Whitacre Jr. to meet again with the five SBC-Ameritech state commissions because regulators throughout the region were convinced that corrections were not happening quickly enough. SBC spokesman David Pacholczyk confirmed that Ameritech is experiencing the same kinds of problems in the five states."[22]

Other reports on Ameritech outside of Michigan confirm that service is not improving: Noted CLEC-Planet on September 28, 2001, "...findings by an independent performance audit that SBC/Ameritech provides substandard service, misleads the Public Utilities Commission of Ohio (PUCO) about its performance and consistently violates state law

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[20] Ameritech News Center, "Ameritech Wisconsin Reports Improving Service", July 24, 2001, www.ameritech.com.

[21] Ameritech News Center, "Ameritech Illinois Reports Improving Service", July 26, 2001, www.ameritech.com.

[22] Kim Sunderland, Phone+ Magazine, March 2001, "SBC Subsidiary Charged With Consumer Fraud.. Illinois Regulators Scrutinize Ameritech's QoS Problems."

show that the PUCO should shelve plans to deregulate Ameritech and not allow the company to enter long distance markets..."[23]

Reporting on the PUCO's discussion of the Ameritech audit on October 11, 2001, this is what the press had to say: " 'Ameritech has become the poster child for bad service', Terry Etter, an attorney for the Ohio Consumers' Counsel, said at yesterday's PUCO hearing on the audit. 'A pattern has emerged here – one of broken promises and inadequate service.'... Liberty's audit found over 22 months [through May, 2001] Customers' service was out more than 24 hours on 474,000 occasions. Ameritech missed service appointments 237,000 times. Customers waited more than five days for service installation 179,000 times. Ameritech failed to correct service problems within the required 72 hours on 121,000 occasions. Each of those cases are potential violations of state minimum telephone standards and each could be subject to a $1,000 fine. That would add up to more than $1 billion... [but said] Ameritech Ohio President James C. Smith... 'Additional fines are neither necessary or appropriate'...The American Association of Retired Persons, which was also a party to the case, urged the commission to levy the full $122.5 million fine, because of the service problems. 'There is very little evidence there is much improvement', said William M. Guber, an attorney representing AARP."[24] Said The Repository, Canton, quoting the representative of the Ohio Consumers' Counsel: "...'The audit confirms what consumers and FCC service quality

[23] Wayne Kawamoto, Managing Editor, CLEC-Planet, CLEC Planet, CLEC News, September 28, 2001, www.clec-planet.com/news.

[24] Alan Johnson, Dispatch Statehouse Reporter, Columbus Dispatch, "Service Found Lacking During Audit Period", October 12, 2001.

reports have told us for a long time – Ameritech Ohio's poor service quality continues and once again Ohioans have paid the price.' ".[25] Noted the Dayton Daily News, "Speaking outside the meeting, Ron Bridges, government affairs director for AARP Ohio, said, 'Even when given a grace period to clean up its act, Ameritech has continued to provide poor service and deny harmed consumers the credits to which they are entitled. It is time to hold Ameritech accountable.' "[26] Noted the Cleveland Plain Dealer, " 'The continuing complaints from customers, and the results of the audit, demonstrate clearly that Ameritech failed totally... well into 2001 to comply with the rules to keep accurate records, or to treat customers appropriately', AARP attorney William Gruber told the PUCO."[27]

Q. WHAT IS THE STORY IN MICHIGAN?

A. The story in Michigan is much the same. Michigan consumers and MPSC representatives have drawn their own conclusions about claims of improved Ameritech service quality. In the Detroit News on June 2, 2001, the headline read, "Complaints About Ameritech Service On The Rise Again". Said the article, "The number of Ameritech customers complaining about poor telephone service is climbing again, almost one year after thousands logged similar complaints with state regulators. In May, the Michigan Public Service Commission received more than the 476 complaints it logged

[25] Paul E. Kostyu, Copley Columbus Bureau Chief, "PUCO Weighs Ameritech Fine", cantonrep.com, a service of The Repository, October 12, 2001.

[26] Laura Bischoff, "Utilities Panel Pressed to Penalize Ameritech", Dayton Daily News, October 12, 2001.

from Ameritech customers during the same month last year... the commission received 445 complaints about improper billing or poor service in April, up from the 330 it received in April 2000... That's a dramatic increase from the 194 Ameritech-related complaints the commission received in January..."[28]

Despite this, Ameritech continued to claim otherwise. Said the Holland Sentinel on July 24, 2001, "Ameritech Tells PSC Service Getting Better"... "Ameritech Michigan is getting better at repairing and installing new service in less time, according to documents the company filed Monday with state regulators." This claim was decidedly different than what the MPSC was seeing: "...the MPSC received 558 complaints about Ameritech in June... the number of complaints the commission received about Ameritech in June is higher than previous months, including the 445 complaints it received in April.."[29] Then noted the Grand Rapids Business Journal on July 26, 2001, quoting Cindie Bucks, general manager for installation and repair for Ameritech, "Bucks said Ameritech continues to fall well under the 36 hour regulatory standard in repair duration. For the first quarter of this year, the company reported residential service repairs in Michigan averaged 32 hours in February, 21 hours in March, 28:50 hours in April and 31:09 in May... [but] ...'We're getting pounded by phone calls', said Ron Choura, supervisor of service quality for the commission's communications division...Choura

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[27] John Funk, Plain Dealer Reporter, "Advocates Want PUCO to Lower Boom On Ameritech", Cleveland Plain Dealer, October 12, 2001.

[28] Amy Franklin, Associated Press, "Complaints About Ameritech Service On The Rise Again", Detroit News, June 2, 2001.

[29] The Associated Press, "Ameritech Tells PSC Service Getting Better", The Holland Sentinel, July 24, 2001.

isn't necessarily buying into those numbers... 'The [phone] companies [such as Ameritech] always say they're compliant, but it is virtually impossible to audit' he said. 'They have electronic records, and if that's what those records show, what are we going to do?'... 'My problem with the quality service rule is what can I do for the business that's been out of service for four days. We have a business that was without service for 28 days and they want to file a formal complaint because service wasn't delivered in a timely manner. The problem is, some companies define 'timely' as 'when we can get around to it', he said. 'I need a definition that's measurable and enforceable.' "[30] And then on August 12, 2001, Neal Rubin of The Detroit News had some choice comments: "Ameritech says its service is improving and things are downright hunky-dory. The Michigan Public Service Commission, taking a somewhat contrary position, says complaints about Ameritech are arriving at a record pace. As for Ameritech's customers – at least, the testy mobs I hear from – they say the only way the company could be more disliked is if it branched into cable tv...

Q. WHAT DOES THE MPSC REPORT?

A. The MPSC, meanwhile, received nearly 10,000 complaints about Ameritech since June, compared to 8,700 at the same point last year... 'We're swamped', says MPSC supervisor Ron Choura. 'We're so much worse off this year than last year I can't believe

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[30] "Consumer Complaints In Michigan", Grand Rapids Business Journal, Lansing, MI, July 26, 2001.

it."[31] Despite all of this, as the MPSC began to consider tighter repair rules for Ameritech Michigan in August 2001, going from the 36-hour standard to the 24 hour standard used by most other commissions in the Ameritech region, Ameritech Michigan said it "doesn't support the proposed 24-hour standard because the standards already in place are working for customers, spokesman Mike Barnhart said..."[32] Then, in September 2001, Ameritech Michigan was running a television spot, applauding itself for the great job it was doing. Said the spot: "Not too long ago, Michigan challenged Ameritech to lower residential repair times. We're proud to say we not only lowered them, we cut them in half. Today, we're making repairs faster, installing new lines faster, and answering you calls faster. Because when your home state asks you to do something, you do your best."[33] The expensive TV and newspaper campaign of Ameritech Michigan was the subject of an article in Crain's Detroit on October 15, 2001: "As Ameritech Michigan moves towards offering long-distance service in Michigan, it's turning up the volume on its message to the public...[its] TV and newspaper ads emphasize improved service in the wake of service-quality problems last year, along with its support of increased competition in the area it dominates, local service... 'It's definitely a concerted effort to confuse the public about the true status of competition, and then convince

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[31] Neal Rubin, "Ameritech Defies Call On Progress", The Detroit News, August 12, 2001, p. 2A.

[32] Amy Franklin, Associated Press, "State regulators overhauling telecom rules on service, repairs", The Detroit News, August 18, 2001.

[33] VMS, New York, Product: Ameritech Market: Detroit, MI Program: News Title: Michigan Challenged Ameritech Length: 30 Station: WXYZ Date: 9/14/2001. www.vidmoncom.

members of the public to support their re-monopolization', said Dave Waymire, spokesman for the Michigan Alliance for Competitive Telecommunications'..."[34]

Q. WHAT HAS LDMI DONE TO ADDRESS ITS SERVICE QUALITY ISSUES WITH AMERITECH?

A. On August 28, 2001, LDMI representatives met with the SBC/Ameritech vice president responsible for its account, both as a CLEC and as an IXC. LDMI flew a representative to Chicago for the meeting. During, the meeting, LDMI's representative indicated that Ameritech's mean time to repair (MTTR) on LDMI's trouble tickets in Michigan had been running far over the state's 36-hour standard, and that performance was trending worse.

Q. HOW DID AMERITECH RESPOND?

A. Ameritech promised to investigate the matter, and responded back in a letter from the vice president, dated August 30, 2001. According to Ameritech, for July 2001 Ameritech showed an MTTR (mean time to repair) on LDMI customer trouble reports of 27.50 hours, and in August, an MTTR of 20.04 hours.

Q. WAS AMERITECH'S RESPONSE ACCURATE?

[34] Amy Lane, "Telecommunications—Spreading the word: Ameritech steps up its efforts to win long distance approval", Crain's Detroit Business, October 15, 2001, www.crainsdetroit.com.

A. No. After receiving the response, LDMI then looked at its data, and LDMI's results showed an MTTR for July of 119.23 hours, and for August, and MTTR of 118.78 hours! Moreover, the results for 2001 were trending worse: The trend was to 72.43 hours on average in May; 107.13 hours in June; 119.23 hours in July; 118.78 hours in August, and 141.00 hours in September, 2001! LDMI went back and checked and rechecked its numbers, but found no error.

Q. WHAT EXPLAINS THE DIFFERENCE IN FIGURES?

A. After considerable research and reflection, LDMI believes it understands at least part of the answer: ***in recent months, for whatever reason, Ameritech appears to be closing out trouble tickets within 36 hours, whether the problem is fixed or not.*** That way Ameritech can report a problem fixed and help its average, while absolutely nothing has been done. Here is one example: On September 21, 2001, LDMI reported trouble to Ameritech concerning an automobile tire retailing firm in Detroit. The ticket was closed out by Ameritech, but the problem was not fixed. Another trouble ticket was opened by LDMI with Ameritech. Again, the trouble ticket was closed out by Ameritech, but when the customer was consulted by LDMI, the customer again indicated the problem was still not fixed. LDMI had to open a total of five trouble tickets on this one problem with Ameritech Michigan. Finally, on October 11, 2001, at 12:52 pm, LDMI was able to close out the problem as being resolved. Elapsed time: 20 days. Not all tickets were closed out by Ameritech within 36 hours, but some were, thereby purportedly "meeting" the 36 hour standard. Another example: an LDMI mortgage company customer in Southfield, Michigan. Reported trouble on September 6, 2001. Problem: no dial tone. Problem was

finally resolved on September 21, 2001. This required four separate trouble tickets to Ameritech in order to resolve. More examples are presented in Mr. Reid's testimony. LDMI has numerous examples where it requires multiple trouble tickets to Ameritech before the one and same problem is actually resolved.[35]

Q. DOES THAT PRACTICE EXPLAIN THE DIFFERENCE IN MTTR NUMBERS BETWEEN LDMI AND AMERITECH?

A. No. This practice of closing unfixed trouble reports can "explain" part of the difference in LDMI-versus-Ameritech MTTR numbers, but by no means can it explain all of the differences. Based on the LDMI data, and the supposed Ameritech data, the discrepancy is caused by a combination of: (1.) LDMI and the other CLECs are not being treated equally with Ameritech's own customers, as required by the Telecommunications Act of 1996 and the MTA; (2.) Ameritech MTTR figures regarding LDMI are grossly erroneous, and deliberately deceptive; (3.) Ameritech clearly is not providing a quality of service to LDMI and other CLECs and their customers as required by law, by standards of decency, or standards of fair and reasonable service to the public; and (4.) Ameritech

[35] Such as a produce customer in Sparta, MI: trouble reported on 10/1/01; dead air; LDMI had to open two trouble tickets with Ameritech on the same problem. And such as a customer in Grand Rapids, MI: trouble reported on 9/17/01; problem with long distance service. Two Ameritech trouble tickets required. And such as a sales consulting firm in Novi, MI: trouble reported 10/3/01; no dial tone; two Ameritech trouble tickets had to be opened before Ameritech would actually fix the problem. And such as a company in Lansing, trouble reported 10/4/01: background ring or busy, such as crossed lines on fax line; after Ameritech closed out first ticket without fixing the problem, LDMI had to open a second trouble ticket with Ameritech. And such as an aluminum products company in Wayne, MI; problem reported 9/20/01; noise/static; again took two trouble tickets before Ameritech would get around to fixing the problem. And such as a hotel in Saginaw, MI, trouble reported 10/1/01: again, took two tickets for Ameritech to actually undertake to fix the customer's problem.

deception and service quality inaction towards CLECs has irreparably harmed local competition in our state.

Q. WHAT OTHER SERVICE QUALITY LAPSES HAVE HARMED COMPETITION IN MICHIGAN?

A. Two recent service outages on Ameritech's network have seriously hampered competition in Michigan.

Q. PLEASE DESCRIBE THE FIRST OUTAGE.

A. On October 3, 2001, millions of toll-free calls throughout the Ameritech region failed, in what may be the largest toll-free outage in the U.S. since "number portability" was instituted throughout the U.S. some years ago. The failure, affecting toll-free numbers beginning with 800, 888, 877 and 866, was a serious disruption to the customers of most long distance companies, such as AT&T and MCI.[36] For LDMI Telecommunications and other CLECs, it was an unmitigated disaster, since the vast majority of LDMI's and other state-based CLECs' toll-free calls both originate and terminate in the Ameritech region.

Q. HAS AMERITECH ACCEPTED RESPONSIBILITY FOR THE OUTAGE?

A. Not in any real sense. But, although it is abundantly clear that the toll-free outage was caused by Ameritech – it occurred in Ameritech's switching control points (SCPs), which house the database that determines the interexchange carrier for toll-free service (only the

[36] Chicago Tribune, October 4, 2001, "Computer Glitch Takes Down Ameritech's Toll-Free System in Five States".

RBOCs, GTE, United Telephone and Stentor in Canada own and operate SCPs) – in searching the news articles that have appeared since the October 3 outage, I have found no instance in which SBC/Ameritech has expressed regret regarding the outage, or said they were sorry, or issued any apology of any kind.[37] Nor could I find any kind of press release at the SBC website – not only was there not a press release stating regret or apology – I could find no press release of any kind regarding the toll-free outage on October 3, 2001.

Q. HAVE REGULATORS MADE MORE INQUIRY THAN AMERITECH APPARENTLY DID?

A. Yes. Clearly, regulators and others were not so sanguine about the problem as was SBC/Ameritech. Said Shana Gerber, spokeswoman for the Public Utilities Commission of Ohio: "When there is a breakdown like this, we become concerned because it affects consumers."[38] And "failure to publicly disclose the nature of the problem promptly caused apprehension among many customers and fanned terrorist rumors," a spokesman for the Illinois Commerce Commission said. The regulators plan to investigate the matter...David Farrell, communications manager for the Illinois Commerce Commission, said his office was flooded with calls from media and the public asking about the disruption. Many wondered if it might be related to terrorist action. 'In this climate, it

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[37] I have searched the Detroit newspapers, plus articles by the AP, Chicago Tribune, e.prairie, Cleveland Plain Dealer, Columbus Dispatch, and Akron Beacon Journal.

[38] Neal C. Lauron, Dispatch statehouse reporter, "800 service disrupted in five states", Columbus Dispatch, October 4, 2001.

behooves the company [Ameritech] to let the public know that something is an internal problem, not something more', said Farrell. 'Our engineers will be contacting Ameritech with written inquiries seeking to know what happened to their back-up systems and what they're doing to prevent this from happening in the future'... Ameritech engineers continue to investigate to determine the precise nature of the software problem, which affected all five states served by Ameritech – Illinois, Wisconsin, Indiana, Michigan and Ohio."[39] And it is known that the toll-free outage was reported to the FCC, "... to the Federal Communications Commission's Office of Engineering and Technology on Wednesday afternoon [Oct. 3], FCC records show. Spokesman Michael Balmoris said the agency is reviewing the report to determine whether an investigation is warranted."[40]

Q. HAS AMERITECH RESPONDED TO THE CONCERNS?

A. No. Ameritech still has not apologized, still has not admitted responsibility, and still has not given a cause for the outage. Recently, Mike Pruyn of AT&T's Public Relations department in Chicago sent an e-mail to Cleveland Plain Dealer reporter John Funk, asking, "Just curious... Did you ever hear anything more from Ameritech [press spokesperson] (Denise Koenig) as to the cause of its software problem that resulted in last Wednesday's toll-free service interruption??? The response back from John Funk of the Cleveland Plain Dealer, on October 11 at about 6 p.m.: "No, but I call the woman

[39] "Computer Glitch Takes Down Ameritech's Toll-Free System In Five States", Chicago Tribune, October 4, 2001.

[40] John Funk, Plain Dealer reporter, "Cause of toll-free woes still eludes Ameritech", Cleveland Plain Dealer, October 6, 2001.

EVERY DAY. I'll get an answer, trust me. I also call the FCC daily to see whether they might get involved. Don't know who is more tired of me."[41]

Q. HOW DID THE OUTAGE DAMAGE CLECS IN PARTICULAR?

A. The outage on October 3, 2001 affected principally the long distance carriers, not Ameritech. Customers contacted their long distance carrier, assuming that the outage was the fault of the long distance carrier, or of the CLEC; many long distance carriers, such as AT&T, WorldCom, McLeodUSA or LDMI, are both long distance carriers and CLECs, and their reputations get tarnished either way in circumstances such as these. "Many frustrated callers who couldn't get through using 800 numbers phoned AT&T, MCI and other long distance carriers to complain. 'We got calls from all over', said Michael Pruyn, an AT&T spokesman based in Chicago. 'Once we determined there was nothing wrong with our network, we worked with others in the industry to locate the cause'."[42]

Q. PLEASE DESCRIBE THE SECOND OUTAGE.

A. On Friday, October 19, 2001, Michigan UNE-P customers of LDMI and other CLECs encountered a major Ameritech UNE-P outage. (WorldCom, CMC Telecom, LDMI and other CLECs utilizing UNE-P have confirmed that their customers were affected by this

[41] E-mails from Mike Pruyn of AT&T to John Funk of Cleveland Plain Dealer, October 11, 2001, as forwarded to Jerry Finefrock of LDMI Telecommunications. [Emphasis in original.] Copy attached as Exhibit JWF-4 (C-__).

[42] Chicago Tribune, "Computer Glitch Takes Down Ameritech's Toll-Free System in Five States", October 4, 2001.

outage.) It is believed that the outage began at 3:30 a.m. Eastern time or earlier on October 19, 2001, and was not resolved by Ameritech until approximately noon, Eastern time. So the outage appears to have lasted at least eight and one-half hours.

Q. HOW WERE CLEC CUSTOMERS AFFECTED BY THE OUTAGE?

A. During the outage, affected UNE-P customers could not make outgoing calls of any kind. They could not make outgoing local calls, outgoing toll calls, outgoing 800 and other "toll-free" calls, or outgoing Operator calls. We believe they also could not make calls to "911" or to access Fire services. At least 5,000 LDMI UNE-P customers were affected by the outage, and we believe that industry-wide (CLECs throughout the Ameritech region), at least 50,000 customers were affected.

Q. WAS THE OUTAGE REPORTED TO AMERITECH?

A. Yes. But, the responses from Ameritech were not heartening. During the outage, Ameritech technicians told us the following: (a.) it affected UNE-P customers in all five Ameritech states; (b.) it affected, at a minimum, UNE-P customers served by Ameritech 5E switches; (c.) it was related to lookups or queries that Ameritech switches apparently make, on UNE-P calls, of the Ameritech AIN computer(s) in Indiana (and which are ***not*** involved in normal Ameritech retail or resale local exchange telephone calls); (d.) that it had to do with "triggers" to the AIN database, which are involved in every UNE-P call; and that (e.) since local retail and resale customer routing does not involve such "triggers" and AIN queries, local retail and resale customers of Ameritech were not affected by the outage, except for a small number of customers who have AIN features.

Q. WAS THE OUTAGE LIMITED ESSENTIALLY TO CUSTOMERS SERVED VIA UNE-P?

A. LDMI can confirm that retail and resale customers, generally, were not affected by the outage. LDMI contacted both classes of customers, in the same exchanges in which it knew its UNE-P customers could not make outgoing calls, and established that none of the retail or resale customers had any outage condition at all.

Q. WHAT CAUSED THE OUTAGE?

A. There is no doubt that a problem at Ameritech caused the problem. Near the end of the UNE-P outage on October 19, 2001, an Ameritech operations manager admitted Ameritech's responsibility to LDMI's Director of Operations Doug Reid. Mr. Reid reports on that conversation in his testimony. Ameritech's own "Incident Report" shared with the Section 271 Collaborative indicated Ameritech began receiving reports at 10 a.m., and indicated it was a switching problem that occurred during an Ameritech LNP migration project. Ameritech also provided to LDMI a report indicating that the root cause was that an Ameritech Workforce Administrator misunderstood the scope of a project. The Incident Report and the report given to LDMI by Ameritech are attached as Exhibit JWF-5 (C-__).

Q. IS THE TIMING SHOWN IN THE INCIDENT REPORT CONSISTENT WITH LDMI'S INVESTIGATION?

A. No. LDMI's technicians indicate that the outage occurred by 3:30 a.m. Eastern time on October 19, 2001, and that Ameritech was aware of it at least by 7:00 a.m. LDMI's technicians also report that the outage was finally fixed at approximately 12:00 noon on that day. The timing set forth in the Incident Report is thus incorrect.

Q. WAS THE INDUSTRY MADE AWARE THAT PROBLEMS LIKE THIS COULD DEVELOP WHEN SERVING CUSTOMERS USING UNE-P?

A. No. CLECs in Michigan were not aware that UNE-P routing was handled differently than that of retail and resale customers. Some CLECs have apparently been told that if they requested "customized routing" for UNE-P, there could be different routing treatment. However, many affected CLECs, LDMI included, have never requested such customized routing. For a UNE-P CLEC like LDMI who has not requested customized UNE-P routing, an important question now is: are UNE-P customer calls routed the same as those of retail and resale customers -- that is, "standard" routing lookups performed entirely in the local Ameritech class 5 originating switch ("existing Ameritech routing tables contained in Ameritech switches") -- or instead, are CLECs' UNE-P customer outgoing calls determined through routing lookups that involve the AIN computer(s)/servers in Indiana? Note that in the above, some CLECs – based on their inquires in regions outside of Ameritech territory – have learned that SBC/Ameritech has said it has chosen to use AIN triggers as a means for providing CABS billing for UNE-P. We are also aware (only because of CLEC intelligence from other states and other regions) that SBC/Ameritech has said it may use AIN triggers for situations where the CLEC requests customized routing for UNE-P. But LDMI, and certain other CLECs,

have NOT requested customized UNE-P routing. And these affected CLECs were not aware that their UNE-P service had been "flagged" by Ameritech, and set up for a failure path which retail and resale local calls do not experience.

Q. HAS THAT INFORMATION BEEN MADE AVAILABLE BY AMERITECH?

A. No. The CLEC Association has been able to find no documentation whatever that would indicate, as noted above, that our UNE-P customer calls would utilize AIN "triggers", AIN lookups, etc. We have searched the CLEC.SBC website to the best of our ability. The CLEC Association has no documentation, and Ameritech has not responded to questions posed by CLECs since the October 19, 2001 outage, as to whether is it possible that the answer to the question (whether regular UNE-P customers, not requiring customized routing, are in fact routed via the AIN system), is different for 5E switches than for DMS and other Ameritech local central office switches that serve the UNE-P customers. Ameritech has also not responded to CLEC questions as to whether the October 19, 2001 UNE-P outage related to the ROUTING of calls, or to the BILLING of calls. Following the October 19, 2001 UNE-P major outage, CLECs such as LDMI have asked Ameritech to immediately be able to speak with the SBC/Ameritech subject matter experts regarding UNE-P routing, and AIN, so we can fully understand and get to the bottom of the above. CLECs also have asked for an explanation of the outage. The Incident Report is the only response to date.

Q. HOW WAS LDMI ITSELF TREATED?

A. LDMI personnel were treated shabbily and with untrue or unresearched statements. My review of LDMI records reveals that, at about 10:45 a.m. on Friday October 19, 2001 (during the UNE-P outage), Nichole Beach of the LDMI office in Grand Rapids, MI called the Ameritech small business office, 800-660-3000, to get status on the UNE-P outage, indicating she was calling on behalf of an LDMI customer. The Ameritech small business office transferred her to Brian in the Ameritech repair department. Brian told Nichole the situation was an LDMI-exclusive problem and that it had nothing to do with Ameritech -- the problem was with LDMI's equipment. Brian proceeded to tell Nichole that he knew nothing of this problem, but could transfer her to LDMI so LDMI could inform her of the situation.

Q. CAN YOU SUMMARIZE THE OUTAGE AND ITS AFFECTS?

A. Yes. In summary, regarding the October 19, 2001 UNE-P outage: (1.) Ameritech has flagged UNE-P lines for discriminatory treatment, as compared to retail and retail local phone lines in the state; (2.) through their own blunder, Ameritech has taken tens of thousands of CLEC UNE-P lines out of service, for over eight hours on a business day, while Ameritech's own local customers have been unaffected; (3.) Ameritech has failed to notify CLECs, and regulators, of the outage on a timely basis; (4.) when asked by the press to comment, Ameritech has deliberately and deceptively downplayed the incident, suggesting falsely that it has no way of knowing how many customers or calls were affected; (5.) to the press, Ameritech has falsely inferred ("these calls are outside our network") that the problem was not Ameritech's, when in fact the involved local lines out of service were provisioned on the Ameritech network, switched on the Ameritech

network, routed on the Ameritech network, and indeed, provided totally on the Ameritech network, and the problem was caused by Ameritech.

Q. WHAT HAS BEEN THE IMPACT ON THE CLEC INDUSTRY?

A. CLECs have been seriously damaged by the Ameritech UNE-P outage on October 19, 2001, and by Ameritech's false and misleading statements to the press, to customers or customer agents, by Ameritech's failure to promptly notify those involved, and by Ameritech's failure to respond to repeated CLEC requests for a timely and responsive "root cause analysis" of the outage. The CLEC Association looks now to the MPSC for effective action in response to this outrageous anti-competitive behavior.

Q. WHAT OTHER SERVICE AREAS HAVE BEEN LACKING IN AMERITECH?

A. For many months now, LDMI has been experiencing extraordinary and unacceptable UNE-P billing problems at the hands of Ameritech Michigan[43]. Despite the huge problems caused by Ameritech actions and inactions, Ameritech has taken no real action to respond to the problems, to resolve the problems, or to escalate the problems within the SBC/Ameritech chain of management.

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[43] LDMI is not the only CLEC Association member to encounter these unacceptable billing problems on UNE-P and other OSS related services. LDMI has focused specifically to detect and deal with these Ameritech Michigan problems for several reasons: First, it is the largest telecommunications carrier now headquartered in Michigan. And second, the substantial majority of its customers, and revenues – and ILEC problems – are in Michigan, rather than other states. Ameritech also serves a higher portion of the state's population in Michigan, 82%, than it does in any of the other Ameritech states. Ameritech has indicated that it serves 82% of the population of Michigan, as compared to 60% in Ohio, 64% in Indiana, 67% in Wisconsin, and 80% in Illinois.

Q. HAVE YOU TAKEN ACTION TO REQUEST CORRECTION FROM AMERITECH OR FROM REGULATORS?

A. LDMI has addressed the problems with Ameritech, with no result. LDMI has also reported these problems to the MPSC staff, and to the KPMG personnel involved in Ameritech OSS testing for the MPSC, on August 6, 2001. The issues were then discussed on the subsequent "Thursday" KPMG status conference call with CLECs, on August 9, 2001.

Q. PLEASE DESCRIBE THE PROBLEMS.

A. Until mid-August 2001, both the daily DUF/DAF (daily usage file and daily access charge file, received by the CLEC from Ameritech), and the monthly AEBS billing (similar monthly file, from Ameritech to the CLEC), were at a per-call level of detail, including associated ANIs (ANIs are the same as "WTNs", or working telephone numbers). The monthly AEBS also included summary level detail at the WTN level (all call records for that WTN for the month). But on August 6, 2001, LDMI learned for the first time in writing from Ameritech: With the conversion to CABS billing on August 18th, with respect to the monthly billing, Ameritech would be ***eliminating*** per-call detail, and would be ***eliminating*** per-ANI (per WTN) data, from the monthly billing.

Q. WHY IS IT NECESSARY TO HAVE THE MONTHLY CALL DETAIL SINCE THE CLEC HAS THE PER-CALL DETAIL, AND PER-WTN DETAIL, ON A DAILY BASIS?

A. The answer is quite simple: because the daily Ameritech DUF/DAF call record data for UNE-P, and the monthly Ameritech AEBS billing data for UNE-P, ***do not reconcile.*** It is LDMI's experience that if you add up the daily DUF/DAF call record data and compare it to the monthly AEBS billing data, ***the daily data is consistently short of the mark*** – the monthly billing is consistently larger than the daily usage data. [LDMI believes that other CLECs engaged in UNE-P are experiencing the same problems, but may not have systems in place to detect such occurrences. And why should they? These problems shouldn't be occurring, and may not be occurring, in other RBOC regions where UNE-P is being successfully billed.] The sloppy and inaccurate UNE-P billing data by Ameritech is a ***double-whammy*** to CLECs: (1.) CLECs have a revenue shortfall, because the CLECs have to bill their customers off the daily DUF/DAF, and those files appear to be missing a substantial amount of call records; and (2.) CLECs are billed the cost for the traffic off of the monthly AEBS (and soon to be CABS) data, which represents more minutes and cost, that the daily usage files have given us for billing purposes. Until mid-August 2001, CLECs at least had the ability to attempt to detect, and bring to Ameritech's attention, problems which can seen by analyzing the daily DUF/DAF, and comparing it to the monthly AEBS. Issues and billing errors which can be analyzed and brought to Ameritech's attention today include the following: (a.) routing errors for some or all of the traffic originating from certain central offices, which affects billing data, for the particular end offices involved; (b.) timing discrepancies, between when Ameritech recognizes traffic/cost/revenue information for a specific customer, in the daily DUF/DAF vs. the monthly billing; (c.) customers whose traffic is

being billed to a particular CLEC, who in fact are not a customer of that CLEC; (d.) calls for CLEC customers based on other missing daily record problems.

Q. WHAT OTHER INFORMATION COULD YOU OBTAIN UNDER THE PREVIOUS BILLING SYSTEM?

A. Based on the AEBS monthly billing, LDMI today finds under Ameritech ***resale*** service, that it is billed for AEBS traffic for a substantial number of WTNs each month ***who are not LDMI customers***. With the elimination of this level of detail on UNE-P, on August 18th, the ability to make such reconciliations, and to obtain credits for the ongoing Ameritech monthly billing screw-ups, ***would be lost forever.*** The new CABS billing will be summarized only to the end-office and LATA level. CLECs will lose all ability to determine whether they are charging a customer the correct amount, or not. Ameritech's position is that CLECs should be billing only from the daily files, and not from the monthly files. If the daily and monthly files agreed, that would be a reasonable approach. But in response to LDMI's inquiries, it does not appear that Ameritech has even made an attempt to ***determine*** if the daily and monthly files are in reasonable agreement – and it is clear that they are not. With the spotlight now focused on OSS testing in Ameritech for "271" purposes, CLECs are absolutely flabbergasted that Ameritech has attempted such a customer-unfriendly, and absolutely unreasonable and unsupportable action at this time. The only thought that seemingly could explain this action is the following: Ameritech believed it could slide this change past the CLECs without anyone knowing what was going on. Then, after the fact, any ability to reconcile seriously mismatched data, with

reference to KPMG and other testing processes, would be rendered unavailable to CLECs and regulators alike.

Q. HOW HAS AMERITECH RESPONDED TO YOUR INQUIRIES?

A. On August 6, 2001, LDMI received for the first time Ameritech answers (in an email), to questions it had posed to Ameritech about this process two weeks previously. The questions, and the answers, were to be discussed on a conference call with Ameritech on Thursday, July 26, 2001. However, on Tuesday, July 24, 2001, LDMI received a voice mail from Ameritech, saying that Ameritech had not been able to get their people together, and that the conference call would have to be re-scheduled. Later, Ameritech begged off again, saying they couldn't or wouldn't help LDMI, and LDMI would have to take up the matter with the Global CLEC User Forum in Chicago, at its next meeting on August 15, 2001. LDMI pointed out the Global CLEC User Forum was only three days before planned action by Ameritech that would be a disaster to the CLECs [the implementation of removing the monthly AEBS file], but LDMI's Ameritech representatives and contacts were unmoved. To paraphrase one of the Ameritech responses (Ameritech Q and A, responding to LDMI's questions): "We, Ameritech, will process the orders to convert individual CLEC customers over to the CABS billing; No, we will not give the CLEC copies of those orders; And no, we won't tell you when a given customer has been converted – you'll see that in the monthly billing after the fact". This relates to question # 7 (Ameritech Q and A.doc, Ameritech responding to LDMI's questions): "7. Q: How are copies of the orders that Ameritech is writing to move BTNs from RBS to CABS going to be delivered to LDMI so that we can verify the

billing?" A: [from Ameritech] "At this time there are no plans to share copies of the conversion orders with the CLECs. As a normal delivery, CABS CSRs will be available to the CLECs."[44] Apparently, that meant that those orders which have been correctly issued and processed by Ameritech will show up in the billing correctly at the end of the process – but those which are screwed-up by Ameritech will apparently never ***appear*** as CABS CSRs.

Q. WHAT IS THE SIGNIFICANCE OF THE CHANGE TO CLECs?

A. Namely, (1.) Ameritech would be converting certain customers from AEBS to CABS, at random, over a period of time beginning on August 18th, and ending in mid- or late-October (in one place in Accessible Letter CLECAM01-189, Ameritech said "mid-October", and in another place, "October 1 – 31"). (2.) CLECs would not be entitled to know, in advance, which UNE-P customers will be converted on which dates, and thus would have no way (until much after the fact) to determine whether the conversion occurred correctly or was screwed up. (3.) Ameritech would be cleaning-up the remaining screw-ups in a summary and arbitrary process by December 31: "December 1 –31… …All remaining CABS loop accounts will be disconnected and final bills rendered". The Ameritech documentation indicated that the CABS billing process for UNE-P will be accomplished via "standard Type J" account handling – but nowhere was LDMI able to find documentation which shows what a "standard Type J" is! So LDMI asked Ameritech specifically about this: "8. Q: What is a 'Type 'J' account as referred to in Accessible letter CLECAM01-189? A: [from Ameritech] "Type J is a code

[44] See Exhibit JWF-__ (C-__)..

assigned on the BDT file to designate a UNE-P switched account." But that gives the CLEC ***no detail***. It doesn't tell the CLEC ***what type of record*** they are looking at. It does not indicate ***what the code will be***, or ***where it will be found***. Ameritech needed to provide CLECs access to ***someone who can speak intelligently about the billing***. They were asked to do so, by LDMI and other CLECs, but did not. From what LDMI was able to glean from Ameritech about the CABS billing change, new BAN (billing account numbers) would be assigned. LDMI's concern was that every time LDMI had set up new BAN numbers with Ameritech in the past, Ameritech has screwed them up: they had been incorrectly set up, and often, delivered on incorrect media, or not at all. LDMI had asked to see the Ameritech orders before these new BANs were set up, so LDMI could help determine that they were set up correctly, the first time. But in the responses (Ameritech Q & A, questions 1 thru 5), Ameritech refused. (On August 6th,, a representative of AT&T indicated to LDMI that as yet, only a few days before the start of the Ameritech billing conversion, they had not yet even received their new BAN numbers from Ameritech. At the Global CUF meeting in Chicago on August 15, it became clear that various CLECs had the same problem).

Q. HOW WOULD YOU DESCRIBE AMERITECH'S "COOPERATION" IN ADDRESSING CLEC CONCERNS?

A. Very poor cooperation. Half of the questions LDMI posed to Ameritech were ***simply not answered*** in the email which LDMI received from Ameritech on August 6th. Ameritech referred to all these answers (or non-answers) as "draft responses that need to be reviewed and verified before they can be treated as official responses". All of the

questions related to these issues: where could the CLECs ***find*** documentation; where ***is*** the documentation; and, will there ***be*** documentation provided. To these questions, LDMI was given ***no answer***. There apparently ***was no documentation*** on this process – for a massive and critical changeover which was to begin in only ***twelve days time***. LDMI knows of no reason why this unwarranted and inexcusable rush to implement an undesirable and unacceptable form of CABS billing had to be done by August 18th. ***It is CLECA's perception that there are so many discrepancies between the monthly and daily files that have been highlighted, that Ameritech had determined to eliminate the detail, so that no more discrepancies can be detected.*** At the Global CLEC User Forum in Chicago on August 15, 2001, various CLECs pleaded with Ameritech not to proceed with the planned August 18th action, but to no avail: SBC/Ameritech once again was unmoved. Ameritech said: too late… the train has already left the station. Various CLECs pointed out the incredible lack of documentation from Ameritech, on the conversion process. At the meeting, Ameritech gave a detailed but verbal description of the conversion process. But as the process unfolded over the next several weeks, it became clear that the Ameritech description of the process, and how it would work and what would be the billing and other ramifications, was incorrect in major respects. SBC/Ameritech claimed to LDMI that LDMI and other CLECs were not entitled to continue to receive monthly UNE-P billing detail for reconciliation purposes, since no other RBOC is providing this to UNE-P users. But in a meeting LDMI subsequently held with KPMG Consulting on September 18, 2001, it became clear that this statement was also false. Qwest provides such detail, to all of its UNE-P users, each and every month, in each and every state in which UNE-P operations are currently taking place.

Q. HOW DID YOU BECOME AWARE OF THE PROBLEM?

A. When a customer, who had converted to LDMI for local telephone service under UNE-P, and found that his local call quantity, which had been about 50 or 60 calls per month, under UNE-P billing had dropped to zero. The customer called, to say, what's wrong here? Why am I not being billed for local calls? LDMI had lost the revenue, but had no way of knowing that, from anything contained in the daily DUF and DAF usage files. Subsequently, other customers have contacted LDMI, with similar problems. They imply that the CLECs are incompetent for not being able to resolve such problems. We never had this problem when Ameritech was our local carrier, they say. But the problems, and the errors, are caused by SBC/Ameritech, not by LDMI; and despite LDMI's best efforts, LDMI has not been able to get Ameritech to lift a finger to try to solve them. The biggest single problem LDMI has observed, is a huge gap – of calls and revenue lost forever – between the date when Ameritech indicates that they have turned a customer up for UNE-P service from LDMI, and the date when the call record data needed from Ameritech actually starts to be registered in the Ameritech daily DUF/DAF files sent to LDMI. It is not that the call data is delayed in being received – it's the fact that for the intervening time period, NO call data is EVER sent – and LDMI records a revenue loss FOREVER. LDMI's director of Quality Control had this very problem, on his own local telephone line, which converted to Ameritech UNE-P on December 8, 2000. He had zero calls charged against his account by Ameritech under UNE-P until December 22nd; the intervening calls have never surfaced, even nine months later.

Q. HAVE YOU STUDIED THE PROBLEM?

A. Yes. LDMI recently completed a comprehensive analysis of the Ameritech UNE-P billing problem, across its base of lines now on UNE-P service, with usage beginning in February 2001. With respect to that base of customers, on approximately 3,000 telephone lines, LDMI has NEVER seen ANY local call records on DUF daily files, ever during that period. LDMI has confirmed Completion notices from Ameritech on all those lines, but no record of any traffic. As LDMI analyzed the remaining thousands of lines that had seen at least some traffic, the average delay between the official Ameritech date of completion and the date on which the first call was placed, was 7.9 calendar days. Now LDMI knows that most of its current UNE-P customers, who are mainly business customers, make at least some calls on each of their phone lines, every day. So LDMI would have expected this gap between turnup and first call to have been close to zero days. (And in a few cases, LDMI did find traffic recorded on the same day as the turnup – it just happened that this was a very rare occurrence). For those customers who converted from LDMI resale of Ameritech over to LDMI "UNE-P" of Ameritech, LDMI conducted a study to see if the missing call records were actually there – that the calls had simply remained for some time on the "resale" DUF file, rather than moving over to the "UNE-P DUF file. But in fact, the calls were simply missing – they did not appear in either file, and LDMI had lost all the associated revenue. In its comprehensive study, LDMI found two lines where the first-traffic date was the same day as the Ameritech Completion date. There were about 500 lines, out of about 15,000 lines, where the first-traffic day was one day later than the Completion date. And there were about 700 where first traffic was on the second day. The largest single-day component was four days out,

and the average delay, as we said earlier, was 7.9 days. And that does not include the 3,000 lines for which traffic was never received. LDMI had customers for whom the gap between Ameritech Completion and first local call placed was as long as 55 calendar days. LDMI saw a number of lines up in that category. And these were lines for which there was no traffic for as much as 55 days, and then traffic began steadily, with many calls on the line, each and every day thereafter. Overall in the study, the aggregate lost billing for LDMI, on Ameritech UNE-P service, was 102,000 lost line-days. LDMI has escalated the problem within Ameritech, to the vice presidental level, without success. LDMI has attempted to speak to the Ameritech SMEs (subject matter experts) on the subject, and Ameritech has refused to allow LDMI to speak with them.

Q. WHAT ACTION SHOULD THE COMMISSION TAKE?

A. The CLEC Association requests the MPSC to take action as follows: First, to order Ameritech to re-institute forthwith the Monthly AEBS file to CLECs in Michigan as an option, containing all the same data elements and data detail which it contained as of its elimination in August, 2001. Despite Ameritech's probable protestations to the contrary, this is a software module which existed, and for which Ameritech should be able to re-insert into the monthly files process in its data processing organization. Based on the CLECs knowledge of their own software and data processing costs, this should represent no financial burden of any consequence to Ameritech, and the re-institution of the Monthly AEBS file is consistent with what Qwest does in all of its states today, and is required for Ameritech to meet proper auditing, accuracy, and data validation. Second, The CLEC Association requests that the MPSC institute an audit of Ameritech's AEBS

and CABS billing, to determine whether sufficient accuracy and reliability of billing, costing and usage data is being achieved, such as to meet the requirements of the Telecom Act of 1996, the MTA of 2000, and to judge whether the results are fully comporting with the Checklist requirements of Section 271.[45]

Q. ARE YOU ASKING THAT CABS BILLING BE CHANGED?

A. No. The CLEC Association understands that some CLECs may prefer CABS billing. However, certain CLECs need the additional alternative of the billing detail available in the AEBS system, and there is no technical reason for Ameritech not to be able to provide it on a CLEC's request.

Q. ARE THERE MORE RECENT PROBLEMS WITH UNE-P BILLING AS WELL?

A. Yes. In November 2001, additional Ameritech-caused problems began surfacing. On DUF files received by LDMI Telecommunications from Ameritech on November 2 and November 3, 2001, special exception software devised and introduced by LDMI disclosed that some 117,234 exact duplicate DUF records had been transmitted by Ameritech to LDMI. Had LDMI not caught and corrected this Ameritech error,

[45] LDMI and other CLECs have discussed the Ameritech AEBS billing problems, billing errors, and elimination of the monthly AEBS data file, with KPMG Consulting, and with the MPSC staff. It has become clear that the existing MPSC procedures and policies regarding OSS testing by KPMG Consulting do not adequately and appropriately address the concerns we have raised here. KPMG has indicated, in response to questions raised in the weekly "Thursday" conference calls with CLECs and Commission Staff, that it is testing only those features and functions which Ameritech provides, and not those features and functions which Ameritech should provide, but does not. This also raises the interesting question for Commission consideration: in view of this policy of KPMG Consulting regarding Michigan OSS testing –

significant numbers of LDMI UNE-P customers would have been double-billed for local call traffic due to Ameritech's mistake. It is likely that some of those customers would then have said, "I never had this problem when I was with Ameritech". Ameritech should have software routines to detect and eliminate the sending of duplicate call records forwarded to CLECs, but they obviously do not. CLECs also report that Ameritech's documentation for electronic transmission of DUF records states that billing will be transmitted, Ameritech towards the CLEC, six days per week. The reasonable expectation, on the part of the CLECs, is that each day's billing will be transmitted in arrears by a small amount (not more than a day), and that the CLEC would be expecting to receive a day's billing, on each of the days, Monday through Saturday. But actually, the CLECs are finding they re receiving **multiple** days' billing, two or three days a week, with minimal billing on the intervening days. Moreover, DAF (access) files are **never** sent on more than five days per week. The inference that the CLECs draw from the observable data is that there is some sort of interruption within Ameritech to the flow of the billing data towards the CLECs, and that Ameritech is playing catchup: their billing programs are not running properly each day, with the result that CLECs such as LDMI **have received as many as eleven DAF files in a single day**. These problems, continuing to be left unattended, cannot possibly signal "271" success. But beyond that, they are problems which the MPSC must take action upon to insure they are addressed and corrected.

based on what it believes the Commission has asked it to do – comprehensive enough to indeed determine whether Ameritech will have met all the "271" requirements?

Q. WHAT OTHER AMERITECH UNE-P BILLING PROBLEMS HAVE BEEN REPORTED BY CLECs?

A. Additional serious and continuing Ameritech UNE-P billing problems have been reported to the MPSC staff as recently as November 9, 2001.[46] For months, LDMI has experienced significant delays between the date of turn up of a UNE-P customer, measured by the Ameritech Michigan EDI provisioning Completion Date, and the date of the first DUF or DAF call as sent to LDMI by Ameritech. I am not talking here about delays in the receipt of DUF or DAF call records -- that is a separate matter entirely -- but the "call date" of the first call record submitted to LDMI by Ameritech. As LDMI has reported to commission staff previously, that delay interval, as experienced by LDMI Telecommunications, has been as long as 87 days. This problem is continuing. Ameritech Michigan has given LDMI no indication as to if or when the problem will be solved; and indeed, Ameritech has yet to acknowledge to LDMI or the CLECs that a problem even exists. But it is clearly having an adverse effect on LDMI customers. The problems continue, and grow ever more serious.

Q. HAVE ANY EXAMPLES BEEN REPORTED?

A. Yes. The e-mail of November 9, 2001 gave one specific example: The customer: the Lamont Christian School, BTN 616-677-1757, located in Coopersville, MI, consisting of four local lines. This customer was migrated to UNE-P, and Ameritech supplied an EDI

[46] See, for example, E-mail, Jerry Finefrock of LDMI Telecommunications, to Tom Lonergan and Ann Schneidewind of the MPSC communications staff, et al, November 9, 2001. Attached as Exhibit JWF-6 (C-__).

Completion Date for the effort as 9/27/01. However, the first traffic date was not until 11/5/01, or well over a month later. To date, DUF records received by LDMI from Ameritech reflect 40 local calls made on 11/5, 27 local calls made on 11/6, and 45 local calls made on 11/7/01. No call records have been received with a call date prior to 11/5/01. Meanwhile, Ameritech has continued to send its own local phone bills directly to the customer, as if nothing has happened, and as if Lamont Christian School is still an Ameritech retail local customer. The Ameritech bill for Lamont Christian School, 616-677-1757 dated October 19, 2001, covers the period of Sept. 20 - Oct. 19, 2001. It also bills the monthly service charges for the four involved lines in advance for the period of Oct. 19 thru Nov. 18, 2001, making no mention whatever that the service was actually migrated to LDMI UNE-P on Sept. 27, 2001. And most serious of all, that Ameritech bill, covering the usage period of Sept. 20 - Oct 19, bills the customer for 1,360 local calls. The only time period for which Ameritech SHOULD have billed the customer for local calls was the period of Sept. 20 - Sept. 27, 2001, since the customer migrated to LDMI on Sept. 27, 2001. And, of course, Ameritech provides no daily call detail from which one could determine the volume of these local calls by date. But, if you note the LDMI figures on local calls above (daily call figures of 40, 27 and 45 calls), this is relatively consistent with 1,360 local calls being the expected figure for a full 30 or 31 day billing period. The customer has also provided LDMI with their Ameritech bill for the previous month, and for the usage period of Aug. 20 - Sept. 19, 2001, there were a total of 788 local calls. So, Ameritech has continued to bill this customer for usage for over a month following the supposed conversion to LDMI UNE-P service, and has

continued to bill monthly service charges in advance when the customer had every reason to expect that those MSCs would be pro-rated or eliminated, and a final bill issued.

Q. IS THAT THE ONLY EXAMPLE?

A. No. This is only one of a number of LDMI customers who LDMI indicates have contacted LDMI, upset that Ameritech charges are continuing in an inappropriate manner: that they are being double-billed for monthly service charges; that Ameritech is failing to end monthly service charges and issue a final bill on a timely basis; and that Ameritech is billing for usage charges far beyond the time when service has been converted to the competing carrier.

Q. ARE THERE IMPLICATIONS ON THIS FOR OSS TESTING?

A. Yes. On the November 8, 2001 KPMG/CLEC conference call, it was indicated that other RBOCs issue a billing completion notice, but that Ameritech does not. We fear that KPMG will not raise a red flag about this in OSS testing, as the rule seems to be, only that which Ameritech says is working and available will be tested. Consequently, the CLEC Association urges that the MPSC open an investigation on its own motion, to fully explore all these issues, promptly, before this whole problem gets further out of hand. CLECs would be happy to cooperate in any way possible in this matter.

COUNT IV -- AMERITECH PRESENTS UNNECESSARY ROADBLOCKS TO CLECS WHEN CLECS SEEK TO SERVE LOCAL LINES WHERE THE AMERITECH CUSTOMER HAS DSL SERVICE FROM AMERITECH

Q. DOES AMERITECH PRESENT UNNECESSARY ROADBLOCKS TO CLECs WHEN CLECs SEEK TO SERVE LOCAL LINES AND WHERE THE AMERITECH CUSTOMER HAS DSL SERVICE FROM AMERITECH?

A. Yes. When LDMI runs into customers whose local phone service is with Ameritech Michigan, and who also have DSL service from Ameritech Michigan billed on the same pilot number bill (or "BTN" – billing telephone number – in Ameritech parlance), it gives them pause – just as it would any other CLEC. Having sold the customer on moving their local phone service over to the CLEC, they want to be able to move ahead, but ***without disturbing the valuable and critical DSL line.*** In the past, when LDMI ran into this situation, it simply arranged a "three-way" call with the Ameritech Michigan business office. The business office was instructed to move the DSL line to a separate bill. When LDMI verified that this order to move the DSL line to a separate Ameritech bill had been successfully completed, it would then issue the order to convert the customer's local lines to LDMI local service by "migrating" the lines over to UNE-P billing. This was a simple and straightforward procedure – and why shouldn't it be? Essentially all that Ameritech was doing on the DSL line, and on the local phone lines, was a simple billing change.

Q. DO YOU HAVE ANY EXAMPLES THAT AMERITECH IS CAPABLE OF MIGRATING LOCAL LINES TO A CLEC USING UNE-P WITHOUT DISRUPTING DSL SERVICE?

A. Yes. An example of this was an electric supply company in Pontiac, Michigan that wanted to become a local phone customer of LDMI. On August 6, 2001, LDMI obtained

a CSR (customer service record, of the Ameritech billing), indicating that the customer's local service included a DSL line on the same bill. LDMI arranged a three-way call with the business office, to move the DSL line to a separate BTN. On September 9, 2001, LDMI obtained a new CSR, which verified that the billing change of the DSL line had been successfully completed. LDMI then migrated the local phone lines of the customer over to UNE-P, and all went smooth as silk: no loss of service to the customer's local "dial tone" lines; no loss of service to the customer's Ameritech DSL line.

Q. HOW HAVE THINGS CHANGED SINCE THEN?

A. Since late September 2001, this simple and repeated successful billing change procedure for DSL came crashing to an end: Ameritech discovered a new way to block CLEC competition, and throttle back DSL: its Michigan business offices have begun to ***refuse*** to provide, via a three-way call, to move such a DSL line to a separate bill. This all happened without notice of any kind. LDMI had an analytical services company customer in Royal Oak, Michigan. On September 24, 2001, LDMI conducted the "three-way" call with the Ameritech business office. Ameritech said fine, it would move the DSL line to a separate bill, as requested. The order had a due date of October 5, 2001. But the DSL line had ***not*** been moved to a separate bill, as Ameritech had represented. In following up on October 10, 2001, "Sylvia" of the Ameritech business office, at "position 105", indicated they had received instructions that they were not permitted to move a DSL line to a separate billing number via a "three-way" call (or apparently via any other means). It won't work, Ameritech said. It can't be done. Instead, Ameritech said ***the only way we will let you move a DSL line to a separate bill is to physically disconnect***

the DSL line, and re-install it – with, according to Ameritech, the DSL line needing to be taken out of service for two weeks in the process. Meanwhile, almost simultaneously, LDMI had another customer, a construction firm in Birmingham, Michigan, with the same situation. LDMI handled the necessary orders to move the DSL line to a separate bill, sometime around September 20, 2001, thinking all would be fine (as it had been on similar orders in the past), and without any notification that any kind that a problem was about to ensue. On September 24, 2001, Ameritech ***disconnected the DSL line of the customer, and also disconnected the customer's local dial tone!*** Despite LDMI's best efforts of escalating the situation within Ameritech, it took a ***full week*** to get the dial tone restored, and, to my knowledge, the DSL line ***is not yet back in service; Ameritech has assigned a due date for the DSL line of Oct. 19th, and refuses to return it to service sooner.***

Q. DO LDMI'S CUSTOMERS BELIEVE IT WHEN LDMI SAYS AMERITECH HAS THIS POLICY?

A. No. This is also illustrated with an example. A third LDMI customer was an architectural firm in Grand Rapids. The Grand Rapids customer was a long distance customer of LDMI, and had agreed also to become a local telephone customer of LDMI. Again, the customer had an Ameritech DSL line on the same bill as local phone service. LDMI told the customer that it had just learned of the new policy of the Ameritech business offices in Michigan regarding DSL lines – that Ameritech was refusing to move the DSL line to a separate bill, which it could easily do, and instead insisting that it must disconnect the DSL line for two weeks during a changeover of service. The customer

said this was ridiculous, and claimed that it was LDMI that was not giving it proper service. On October 15, 2001, the Grand Rapids architectural firm indicated in writing not only that LDMI would not be their local telephone carrier, but that LDMI was also losing all their long distance telephone service as well.

Q. HOW DOES THIS PRACTICE PREVENT COMPETITION FOR THE CLEC INDUSTRY IN MICHIGAN?

A. Consider the following: You are the chief executive officer of a growing high tech company thinking about moving to Michigan. Locating near your big customers in the auto industry makes sense, and you like the high skills in the Michigan workforce and the quality of life the state offers. But you need high speed, high capacity broadband capacity to operate your business, far in excess of the 56K dial up modem for Internet access that is pretty much the standard across Michigan. When you ask service providers like Ameritech how long it will take to put in a T-1 or even get DSL service, you can't get an answer... you think again and decide not to move to Michigan."[47] Now, consider where the customer has finally managed to obtain DSL service from Ameritech. That customer now learns that it must lose that service for at least two weeks if it changes its local lines to a competitor. That customer is not likely to change local service providers. That is an unbelievable barrier to competition.

Q. WHAT SHOULD THE COMMISSION DO ABOUT IT?

[47] Phil Power, Insider Business Journal, July 6, 2001.

A. The Commission should recognize that this practice is happening, that it is not necessary, that it is harmful to competition in Michigan, and order Ameritech to return to its prior practice (or a similar practice) of three way calling to move the DSL line to a separate bill, and find that requiring shut downs of existing DSL lines in order to move local service to a competitor is anticompetitive and must cease.

COUNT V – INADEQUATE UNE COMBINATIONS

Q. HAS LDMI ALSO ENCOUNTERED PROVISIONING PROBLEMS WITH UNE COMBINATIONS?

A. Yes. As indicated in the complaint, LDMI and other CLECs are hampered by the various restrictions placed on UNE-P by Ameritech, including the requirement to sign the Mi2A to get so-called new combinations. Efforts of non-facilities-based CLECs to compete with Ameritech would be greatly enhanced if the restrictions listed in the complaint were removed. In addition, Ameritech has placed roadblocks in the provisioning of UNE-P.

Q. COULD YOU ELABORATE ON SOME OF THE PROBLEMS?

A. Yes. One serious problem has been the "flow through" problem. Starting early in 2001, executives and managers of Ameritech Michigan assured LDMI that the great majority of UNE-P orders "flow-through": that is, the great majority of UNE-P migration orders which LDMI submits via EDI (electronically) will be handled in a fully-automated manner, without requiring manual intervention by Ameritech personnel. But as LDMI personnel visited the Ameritech Michigan LSC center during the last several months, several Ameritech front-line troops whispered to LDMI people that such assertions

simply aren't true. LDMI also observed substantial quantities of UNE-P orders on which data which LDMI had submitted electronically had somehow changed, or typographical errors had been introduced, suggesting that large quantities of these UNE-P orders had been manually re-keyed by SBC/Ameritech personnel, or otherwise altered or handled in a manual way. To get to the bottom of this serious concern about Ameritech credibility, and other Ameritech Michigan problems, LDMI communicated with its Ameritech Account Manager on May 26, 2001, saying in part, "LDMI is experiencing serious problems with SBC/Ameritech OSS systems: in particular, provisioning issues on UNE-P. The difficulties are growing ever more serious. As a result, LDMI needs to conduct a weekly meeting with you, as our Account Manager, and with management officials of the Southfield LSC, for the duration until the problems have been solved and resolved. I need to hold the first weekly meeting with you and Southfield LSC officials this week, the week of May 28th."

Q. DID AMERITECH RESPOND TO THESE EFFORTS?

A. Not in any meaningful way. Subsequent LDMI communiqués noted, "I am still awaiting word from you, as to the date, time and location of the meeting this week"; and "Time keeps slipping by. I need to know immediately if SBC/Ameritech will meet with LDMI this week, or not." But ultimately, Ameritech refused to hold that first "weekly" meeting with LDMI until June 11, 2001. And despite detailed written questions from LDMI well in advance, with a request for written answers from Ameritech, written answers from Ameritech were not supplied at the June 11 meeting – the written answers, such as they were, were not communicated to LDMI until June 22. One of LDMI's written questions

to Ameritech on May 30, 2001 was: what percentage of LDMI orders for UNE-P migration, as submitted to Ameritech, actually "flow-through"? At the meeting on May 11, Ameritech Michigan responded that, from a study on LDMI orders which they had recently conducted, only 42 percent of LDMI orders "flow-through". The great bulk of the orders, or 58 percent, therefore involve manual handling by Ameritech, and the potentiality of Ameritech-induced errors during re-keying or other such manual processing at the Ameritech end. LDMI asked Ameritech to put the percentages of LDMI orders that flow-through in writing; but in its written response of June 22, Ameritech did not do so. And, again, Ameritech Michigan did not do so at the next meeting with LDMI on June 28, 2001, which consisted of myself, our Ameritech Account Manager, Ameritech Service Manager, and Regional Service Manager.

Q. WERE OTHER PROBLEMS WITH FLOW THROUGH IMPLEMENTATION MADE CLEAR DURING THIS INVESTIGATION?

A. Yes. It was further made clear during Ameritech Michigan's comments at the May 11, 2001 meeting that various other orders are rejected by Ameritech for miscellaneous reasons and are not counted in the statistics of UNE-P orders submitted by LDMI for the "flow-through" statistics. Thus, the percentage of LDMI orders which actually flow through is less that the 42 percent number we were given. It its May 30, 2001 questions, LDMI pointed out KPMG's definition of flow-through from the Michigan Master Test Plan, and said, "It is LDMI's observation that an unacceptable amount of UNE-P orders submitted to Ameritech Michigan end up involving manual intervention by Ameritech's service representatives. This is despite repeated statements by SBC/Ameritech

management that the great majority of UNE-P orders in Michigan 'flow-through'. LDMI and SBC/Ameritech need to jointly get to the bottom of these discrepancies." In its June 22 response, Ameritech declined to directly respond. Ameritech said simply, "You need to contact KPMG to get their definition of 'Flow Through'. We can not speak for other entities." [But as Ameritech well knew, LDMI had gotten the KPMG definition, and had supplied it to Ameritech as part of its May 30 questions!] As to working together to get to the bottom of the discrepancies, Ameritech said nothing. In its May 30, 2001 questions, LDMI said, "KPMG defines flow-through as follows: 'An order placed by a CLEC's customer service representative that can be provisioned correctly without manual intervention by Ameritech's service representatives'"... [and went on to say], "LDMI requires a detailed written response from SBC/Ameritech, as to whether its definition of 'Flow-through' is identical to that of KPMG, above, and if different, precisely how it is different." In its June 22, response, Ameritech didn't answer the question. Again at the next meeting with Ameritech Michigan on June 28, 2001, LDMI again asked for Ameritech Michigan's definition of flow-through, and whether it differed from that of KPMG, and again, Ameritech Michigan declined to respond. In its May 30, 2001 questions, LDMI said, "If there is any re-keying of LDMI's orders, or portions of orders, at the Southfield LSC, or otherwise the order may have 'fallen through to manual', this does not constitute 'flow-through', in LDMI's judgement. Please indicate in a written response whether SBC/Ameritech concurs with the LDMI view on this point. In its June 22 response, Ameritech didn't answer this question. LDMI asked again at the meeting on June 28th, and again, Ameritech Michigan declined to respond. In its May 30, 2001 questions, LDMI said, "Please also provide a flowchart showing each interface point and

involved system, in the 'Flow-through' and non Flow-through process, and include full definitions for any acronyms used." During the June 11 meeting with Ameritech, LDMI pointed out that other RBOCs have provided such flowcharts to CLECs, but in a search of the SBC/Ameritech websites, LDMI had not been able to find such flowchart documentation as applicable to Ameritech. In its June 22 response, Ameritech did not provide such a flowchart, and again did not provide it in the subsequent meeting on June 28. Ameritech Michigan referred to whatever documentation was on CLEC online, and said whatever it was, it was adequate, and no further documentation would be given to LDMI separately.

Q. PLEASE CONTINUE.

A. In its May 30, 2001 questions, LDMI referred to the posted "Ameritech Flow-Through and Exceptions document, as posted as of 5/28/01, https://clec.sbc.com/cmp/cmp.cfm", and asked, "What is the exact definition of each UNE-P exception?" In the June 11, meeting, Ameritech Michigan personnel responded with words to the effect of, "you should already know what all of these mean". LDMI's response was to the effect of "we ***don't*** know what these mean, otherwise we wouldn't have asked the question! We've searched the SBC website, and can't find many of them defined – an example being, 'Complex TOS'." At this point, Ameritech responded that LDMI had made a good point, and that definitions should be supplied to LDMI. But in its June 22 written response, Ameritech declined to provide ANY definitions – for 'Complex TOS', or anything else. Instead, Ameritech said:

> "The posted 'Ameritech Flow Through and Exceptions' document,

As posted as of 5/28/01, https://clec.sbc.com/cmp/cmp.cfm

- What is the exact definition of each UNE-P exception
  This information is located online in the CLEC handbook
- Where is documentation of these definitions found?
  This information is located online in the CLEC handbook
- How would LDMI or Ameritech spot each such exception
  You would have to look at each and every order
- Is each such exception noted, by exception type, on reject notification back to LDMI?
  The exception is noted on the reject report"

At the June 28th follow-on meeting, Ameritech Michigan indicated that they believed the definitions as found at the CLEC online website were sufficient, and no further definitions would be provided directly to LDMI. LDMI's Ameritech Michigan Account Manager said, your LDMI reps [your own employees] know what these mean, and you should ask them.

Q. DID YOU FOLLOW UP FURTHER ON THE EXCEPTIONS TO THE FLOWING THROUGH OF ORDERS?

A. Yes. In its May 30, 2001 questions, LDMI said "The list of exceptions [to what orders Flow-through] is formidable. It's clear that a substantial portion of UNE-P orders are currently defined outside the scope of automated EDI handling, and hence, are defined outside the scope of 'Flow-Through'. What is the schedule by which each of these exceptions will be moved over to become 'Flow-Through treatment? Please respond in writing." In its June 22 response, Ameritech did not answer this question. And again, at the June 28th meeting, Ameritech Michigan did not provide such a schedule for flow-through improvement. In its May 30, 2001 questions, LDMI asked, "In addition to the 'Flow-Through and Exceptions' list posed at the SBC CLEC web site, and the 5/29/01

revised Ameritech Flow-Through and Exceptions Matrix, are there ANY OTHER conditions experienced in UNE-P orders processed at the Southfield LSC center, where the order could 'fall through to manual', require any amount at all of LSC re-keying, or otherwise require any manual intervention of any kind prior to being fully provisioned? Please respond yes or no in writing, and if yes, provide full details." In its June 22 response, Ameritech did not answer this question. LDMI, in its May 30, 2001 questions, then listed a series of actual LDMI-to-Ameritech problem reports, and asked for each, "Is this [this order] a new Exception to [the] Ameritech Flow-Through process?" In its June 22 response, Ameritech did not answer this question.

Q. ARE YOU CURRENTLY AT AN IMPASSE WITH AMERITECH ON FLOW THROUGH AND OTHER UNE-P ISSUES?

A. Yes.

COUNT VI -- UNAVAILABILITY OF VOICE MAIL WITH UNE COMBINATIONS

Q. PLEASE EXPLAIN THE IMPORTANCE OF HAVING VOICE MAIL AVAILABLE WITH UNE COMBINATIONS.

A. Voice mail is an important feature for customers, and if it is not made available with UNE-P, the potential customer base for CLECs is drastically reduced. Ameritech makes the feature available if a higher cost resale approach is used, but will not provide the feature with UNE-P (or will do so only at a greatly increased price) despite the lack of a technical reason for not simply providing it.

Q. WHAT IS THE COMPETITIVE IMPACT OF THIS POLICY ON THE CLEC INDUSTRY.

A. Ameritech Voice Mail is a service that Ameritech has heavily and successfully marketed to Michigan businesses and consumers, through an aggressive program with its authorized distributors, sales agents, direct sales organization, business offices, and telemarketing representatives. The result is that a CLEC that cannot provide comparable voice mail service with its local service offering cannot compete for the customers that require that service, leaving that market almost entirely to Ameritech. Roughly 20% of the potential UNE-P business market in Michigan is unavailable due to CLECs' current inability to obtain an acceptable and reasonably priced Ameritech Michigan UNE-P voice mail product, or to get access under any reasonable terms to the SMDI links and stutter dial tone to be able to deploy the CLEC's own voice mail platform via UNE-P in Michigan. The fact is that a substantial fraction of the business and residential customer base of Ameritech Michigan has selected Ameritech Voice Mail as their method of voice mail, and those customers expect that if a CLEC is to become their local telephone provider, the CLEC must be able to provide the same or virtually identical voice mail service, ***including*** the "stutter dial tone" and/or lamp indicator that they receive on the local phone line, indicating they have a message waiting.

Q. ARE OTHER PROVIDERS AVAILABLE?

A. Ameritech has claimed that there are "many companies" who could provide voice mail, but that misses the point. Many CLECs have voice mail systems. But none of those can access the vitally required "stutter dial tone" of Ameritech in its central office that serves

the local UNE-P customer, unless Ameritech Michigan cooperates to make it available. And Ameritech Michigan has not done so.

Q. WHAT ACTION DO YOU RECOMMEND THAT THIS COMMISSION TAKE?

A. The Commission should direct Ameritech to provide either the availability at TSLRIC pricing of Ameritech Voice Mail under UNE combinations, or the ability of a CLEC-provided voice mail system, once it recognizes that the customer has one or more messages in their mail box, to communicate with the Ameritech local central office switch, and turn on the "stutter dial tone" feature on their phone line, alerting that customer that they have messages.

COUNT VII – AMERITECH'S ATTEMPT TO EXTORT SIGNING OF THE MI2A

Q. PLEASE DESCRIBE WHAT LDMI BEGAN TO EXPERIENCE IN JUNE 2001.

A. Beginning on June 26, 2001, Ameritech Michigan began to reject all LDMI "change" orders on UNE-P, saying that it did not have to, and would not, process any such UNE-P "change" orders for LDMI until and unless LDMI had signed the Mi2A agreement. Change orders are for actions such as a change of locations or features for a customer.

Q. HOW DID LDMI RESPOND?

A. In order to get around this action by Ameritech, which had not previously been disclosed, LDMI has had to do the following: (1.) establish a new Ameritech Michigan BTN (billing telephone number) for the involved telephone lines; (2.) place an order with Ameritech Michigan to convert those lines from UNE-P to local "resale"; (3.) complete

the "change" order activity; (4.) place another order, to convert the lines back to UNE-P; (5.) take action to eliminate the temporary new BTN, restoring the lines to the proper BTN under UNE-P.

Q. HAVE YOU EXPERIENCED OTHER PROBLEMS WITH AMERITECH REQUIRING THE Mi2A?

A. Yes. Another issue of this type began within the context of trying to solve the flow-through problem with UNE-P orders discussed previously. In its May 30, 2001 questions, LDMI pointed out that SBC/Ameritech was suddenly defining "UNE-P New Installs in Michigan" as a non-Flow-Through category. LDMI asked, "What is the SBC/Ameritech definition of 'New Installs' as used in this description, and how can LDMI specifically identify UNE-P orders or lines which will fall under this SBC/Ameritech definition?" It its June 22 response, Ameritech did not answer this question. In the June 28 meeting, LDMI again asked, and the answer was: if, in processing the order, we have to check whether facilities are available or not, then we consider this to be a new install request, and we're not going to provide it unless you either sign the Mi2A, or you sign the "SBC/Ameritech merger agreement". At this point Sharyn Mooney of LDMI responded that on LDMI orders for additional lines under "resale", Ameritech is not checking to see if facilities are available or not: that typically Ameritech waits until the actual due date, the day when the service is to turn up, to notify LDMI that it has discovered no facilities are available, and so this definition on UNE-P didn't make any sense. In its May 30 questions, LDMI referred to the 5/29/01 revised Ameritech Flow-Through and Exceptions Matrix, and asked, "How did 'UNE-P New

Installs in Michigan' suddenly achieve Non-Flow-Through Status?" Ameritech's response this question, on June 22, was simply, "At this time LDMI is not approved to do new installs in Michigan." Again, I asked for the definition of new installs for which Ameritech Michigan would reject the order because we hadn't signed the Mi2A, and the Ameritech Michigan Service Manager responded, "any new install. But what about, I asked, an order where all the wires and facilities necessary to turn up the line were already in place and connected, and the only thing necessary to turn on dial tone was a translation in the central office? Again, on June 28th the Ameritech Michigan response was: that's a new install, and won't be processed on UNE-P unless LDMI has signed the Mi2A. I pointed out that during the Michigan Tariffs Collaborative, Ameritech conceded that it would consider such a circumstance to be an "existing combination" not a "new combination:", and thus such a UNE-P order would not be classified a new install.

COUNT VIII - EELS, PRIVATE LINES, AND AMERITECH MICHIGAN DISCRIMINATORY BEHAVIOR

Q. DO YOU HAVE EXPERIENCE WITH PURCHASING DS1 AND DS3 CAPACITY FROM AMERITECH?

A. Yes. Many CLECs serve small and medium-sized businesses and residential users. Such small customers do not cost-justify the kind of investments required for CLECs to build fiber optic facilities direct to the customer location. Consequently, the CLEC is dependent on Ameritech for the "last mile" to get to such a customer. The CLECs must purchase their "last mile" DS1s to customer locations out of Ameritech's Tariff F.C.C. No. 2 tariff, at exorbitant rates. These are referred to as "Special Access" facilities.

Q. HAS THE COMMISSION ORDERED MORE FAVORABLE RATES OR TERMS THAN ARE CONTAINED IN THAT TARIFF F.C.C. No. 2?

A. Not at this time.

Q. IS THE CURRENT PRICING STRUCTURE COMPETITIVE?

A. No. Ameritech's actions in the pricing and terms for DS1 service to carriers and customers is anticompetitive. And while my focus is on DS1s, my testimony applies equally to DS-3 speed of access and above. A competitive offering, for example, would allow a CLEC to purchase under month-to-month terms, but the typical DS1 (average mileage distance: 18 miles) costs $1,129.16 per month, and $1,493.00 to install. Carriers can buy the same facility under a 60-month Optional Payment Plan, in which case the monthly price drops to $502.86, and the installation drops to $50.00. But the carrier is then locked into a penalty charge for early termination that can be as large as $30,000. Meanwhile, Ameritech's favored distributors and a few favored ISPs can buy the same circuit for $195 per month and zero installation. Obviously, customers won't buy DS1 service from a CLEC at $1,129.16 per month (assuming a pass through only of direct facility cost, with no administrative handling charge or profit). Such a price is uneconomic[48]. A customer can obtain the same service directly from Ameritech for a third that cost in a typical arrangement.

[48] On 9/10/01, ISP MegaPath Networks began selling T-1 service at a price of $699 per month. But analyst Jeff Moore, from the consultancy Current Analysis, inidcated the $699 per month price was too expensive for wide customer acceptance. "I don't know how many people

Q. IS THE SPECIAL ACCESS ARRANGEMENT IDENTICAL TO EELS?

A. Technically, yes. Under the new "EELs" offering, in theory, a CLEC or carrier could buy the same circuit for a very reasonable $90.23 per month (but with an unjustified and outrageous $1,189.19 installation charge). In practice, however, Ameritech has loaded up the EELs offering with so many restrictions that it is nearly impossible for a CLEC or carrier to qualify for such an opportunity.

Q. HOW DO THE LIMITS ON EELS ACT ANTICOMPETITIVELY IN MICHIGAN?

A. The FCC in August, 2001 issued a report on "High-Speed Services for Internet Access".[49] The overall statistics seem quite rosy: "High-speed lines connecting homes and businesses to the Internet increased by 63% during the second half of the year 2000, to a total of 7.1 million. The rate of growth for the full year was 158%." But look at the picture for the State of Michigan (Table 6 of the FCC study), and you'll see a different story. Michigan represents four percent of the country's population. But here are the figures for Michigan, for the most recent reporting period (December, 2000). Of ADSL lines, Michigan represents a ridiculously low 1.3% of the nation's total. Of cable modem lines (shown in the FCC report as "coaxial cable"), Michigan comes in at a fairly respectable 3.6% of the U.S. total -- near to its share of U.S. population. But as Table 4

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this will attract", said Moore. ["DSL Reseller MegaPath Adds T-1", Network World, September 10, 2001.]

makes clear, NONE of the cable modem lines ("coaxial cable") are provided by the ILECs -- all of them are provided by cable companies. Back in Table 6, of "Other" Lines, Michigan is 2.8% of the U.S. total. But of the "Total Excluding Cable Modem Lines" , Michigan's total of 67,934 lines is only 1.9% of the nation's total of 3,529,851 lines. Reporting on the same FCC August 2001 report on broadband deployment, Network Magazine Editor-in-Chief Steve Steinke, in the October 2001 issue just released, said as follows: "***The Last Mile Today...***Modified cable TV lines constitute the highest number of broadband residential installations of any of the four categories [of broadband lines in the FCC report], but cable lines have never been widely deployed in commercial and industrial neighborhoods...Wireless technologies have been slow to deploy, primarily because of technical shortcomings... profits capable of paying for pure fiber [to the doorstep] could be a long time coming... ***The access networks that link residential and enterprise users with public networks are the principal bottleneck that obstructs potentially exciting new services, such as voice/data integration... it would be hard to find anyone to disagree with this statement, or its corallary, which is that unclogging this bottleneck is necessary to realize the real long-term benefits of all the new networkikng technology that has developed in recent years".***[50] The General Accounting Office of the Federal Government, in a recent report, concluded there is very little competition today in the broadband services market, and high prices for broadband are a huge problem. The GAO findings were reported on in an article in the May 1, 2001 issue

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[49] Industry Analysis Division, Common Carrier Bureau, FCC, "High-Speed Services For Internet Access: Subscribership As of December 31, 2000", report published August 9, 2001.

[50] Steve Steinke, Editor-in-Chief, Network Magazine, "The Last Mile Today", October 2001, p. 10. [Emphasis added.]

of Xchange Magazine: "Federal report shows broadband competition lacking, 'cost chasm' growing... A report from the federal General Accounting Office on Internet usage suggests there's scant competition in the broadband services market... Internet demographics indicate a cost chasm based upon service connection prices and household income..."[51]

Q. DOES THIS PROBLEM FACTOR INTO THE RELIEF REQUESTED?

A. When in this Complaint we ask the MPSC to make structural changes to solve CLEC Special Access problems, and eliminate rules which block CLECs from using EELs service for "any good purpose", we have good reason. As the numbers show, for those services for which Ameritech and the other ILECs are the bottleneck (Totals Excluding Cable Modem Lines), ***Michigan has only half as many such lines as do the rest of the U.S., based on its share of U.S. population as a whole.*** As various observers have noted, "The 'last mile', which is the connection between the customer and the [CLEC or other provider], is considered by many to be the bandwidth bottleneck standing between current and future broadband services, such as switched voice, high-speed data services, and high-speed Internet access."[52]

Q. WHAT ABOUT DSL SERVICE?

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[51] Kim Sunderland, Xchange Magazine, May 1, 2001, "Federal report shows broadband competition lacking, 'cost chasm' growing".

[52] James Im, Lucent Technologies, Lucent Worldwide Services Whitepaper: "Providing Local Broadband Services: a Review of Five Last-Mile Technologies". [Emphasis added.]

A. Despite all the talk about DSL service, T1 service represents the principal effective pathway for providing Broadband and high-speed Internet access over the next several years. A DS1 can provide data at about twice the speed of DSL service. Alternatively, it can provide 24 simultaneous voice-grade channels, for local or long distance telephone access. And a DS1 can be configured so that it SIMULTANEOUSLY is providing ISDN-speed data, high-speed Internet access, and local and long distance access. "Broadband is still not getting to consumers, says Hewlett-Packard chief executive Carly Fiorina, and DSL turnups are slowing down, says San Antonio-based SBC" [Dallas Morning News, 9/11/01]. For most businesses, the only real choice has been the local telephone company's venerable T1 connection – a couple [of] pairs of ordinary copper phone lines..." [[ITWorld.Com, "High Speed, Low Cost", http:/www.itworld.com/Net/2590/CIOet/.]. Another study references Phil Evans, senior vice president at P-Com Inc, who "believes that there are approximately 700,000 to 750,000 commercial buildings in the United States that accommodate some 100 or more people. Of those, he says, only 20 percent to 25 percent of these buildings are connected to fiber cable."[53] Other estimates are even lower: "Similarly, less than 10 percent of the U.S.'s 750,000 businesses are said to have access to high-capacity fiber links."[54] But Ameritech DS1s (T1s), which can be provided on just two ordinary pairs of telephone wire, can get to virtually all of those buildings, and today.

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[53] Telecom Business, September 2000, John M. Lusa, "Broadband wireless industry comes into its own".

[54] Broadband Wireless, September 11, 2001, Joanie Wexler, "Broadband wireless in the U.S.: Make-or-Break Time?"

Q. WHAT IS THE STATE OF SBC'S DSL BROADBAND GROWTH?

A. SBC Communications has noted that it experienced a big drop in DSL lines from the first half of 2000 to the second half..." [Financial Times Limited, 8/9/01]... Stretching veracity to the limit, SBC claimed this drop was "...in large part due to the ever-increasing regulatory burdens that DSL providers – as opposed to cable providers – face." A more credible assessment of SBC's results comes from Mike Lunsford, executive vice president of broadband at national ISP Earthlink: " 'If it gets down to just the Baby Bells, you'll see them raising rates and eliminating marketing development funds', he says... Already, SBC has slowed its DSL marketing, while waiting for the competition to die, he says. As proof, Lunsford points to SBC's recent slowdown in adding new DSL lines. SBC added 250,000 lines in the fourth quarter of 2000. In the first quarter of 2001, it added 180,000 lines; and in the second quarter, just 80,000 lines, Lunsford says... 'It's a constant downward growth pattern', Lunsford says. The reason? 'Why rush if I'm not worried about losing customers to Covad [or other failed broadband providers]' ".[55] Meanwhile, a lawsuit has been filed against SBC, accusing it of misleading consumers about cable-modem Internet service.[56]

Q. HOW DOES THIS IMPACT LDMI AND OTHER CLECs?

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[55] PC World, August 17, 2001, "DSL Service Falters As Providers Crumble".

[56] The Wall Street Journal, August 29, 2001, page A4, "Lawsuit Charges SBC Unit With Misleading Advertising." Article refers to Charter Communications Inc. filing suit against Southwestern Bell Telephone.

A LDMI and most other CLECs serve small and medium-sized businesses and residential users. Such small customers do not cost-justify the kind of investments required for CLECs to build fiber optic facilities direct to the customer location. According to FCC data, of 7,106,229 high speed lines which existed nationally as of December 2000, only 5.3% were provided via fiber to the customer's location, and the growth in the number of such fiber lines over the past year was "NM" [not meaningful]. Of 5,206,257 Residential and Small Business High-Speed Lines, the picture was far worse: only ***three tenths of one percent*** of those lines were provided via fiber to the customer location. [Federal Communications Commission, Industry Analysis Division, Common Carrier Bureau, "High-Speed Services for Internet Access: Subscribership As of December 31, 2000", August 2001.] And although extensive fiber optic facilities have been constructed around cities on SONET rings, both in Michigan and other states by ILECs such as Ameritech Michigan, "T1 service delivery via DS1 connections continues to be the primary customer interface dropped from SONET rings." [Carrier Access Corp., 2001, http://www.carrieraccess.com/products/applications/index.cfm/fuseaction/default_app/cat_id/76.htm]. But DS1s are not dependent on fiber to the customer premises. They can be provided over any kind of telecommunications media, most commonly, just two pairs of ordinary phone wires, in the ordinary phone cable which connects to virtually every phone customer in the country. First introduced in the early 1960s, the electronics for DS1s are quite mature, and quite inexpensive. And, speed of data transmission does not drop (or become precluded), as the distance of the local loop increases. Said Network World Magazine last year, "Most business managers know what a square foot of office space costs, but if you ask them the cost of a T-1 circuit... they probably couldn't tell

you. That's because you can... get quotes differing by thousands of dollars per year. But aside, little else distinguishes the data services sold by different carriers. In fact, long-haul T-1 lines are close to becoming a commodity." The article shows an illustrative T-1 circuit where the "local loop" (portion provided by the RBOC) is $364 per month. A price that low is typically not available to carriers like LDMI, from Ameritech Michigan. ["Demystifying T-1 Pricing", Kevin Dunetz, Network World, 5/8/00.] As the Wall Street Journal has noted, "While there is an ***over-capacity*** of nationwide, ***long-haul*** fiber networks, there is a ***dearth*** of capacity in most ***cities***... Companies that can fix these ***local bottlenecks***, thus stimulating Internet demand, could win lots of business."[57] But while the CAPs and CLECs have a relatively small amount of fiber in the cities, the amount of "last mile" fiber in the hands of Ameritech and the other RBOCs is huge: "Though the FCC's statistics only extend through 1998, they give some idea of the competitive landscape: combined the RBOCs had deployed nearly 14 million miles of fiber, compared with just 3 million miles for CAPs and CLECs."[58]

Q. HOW DOES THIS RELATE TO THE ABILITY OF CLECs TO COMPETE?

A. CLECs are dependent on Ameritech for the "last mile" to get to such a customer and are asked to purchase their "last mile" DS1s to customer locations out of Ameritech's Tariff F.C.C. No. 2 tariff, at exorbitant rates. As one industry study has observed, "The ILECs

[57] Wall Street Journal, July 19, 2001, "Live Wires: Venture Capital Sees Promise In Battered Telecommunications Sector". [Emphasis added.]

[58] Eric Krapf, "Can Fiber Make It Down The Last Mile?", Business Communications Review, February 2000.

retain substantial market power in the provision of special access services, even within the narrow service and geographic niches where competitive local exchange carrier ("CLEC") competition is developing...prices for these [special access] services remain at the generous caps... prices are high relative to forward-looking costs...the ILECs, of course, are the dominant providers of [special access] services. On the vast majority of point-to-point routes, and in many parts of the country, they are also the only providers... the special access market is not competitive. Even in the local geographic areas where competitors have concentrated most of their investment, substantial numbers of end users simply do not have competitive alternatives. The classic concern, of course, is that firms with market power will charge prices that exceed cost." ["Deregulation of Special Access Services: Timing Is Everything", Daniel Kelley, HAI Consulting, Inc., July 2, 1999 revision, at pages i, iii, 7, and 18.]

Q. HAS THAT BEEN THE CASE IN PRACTICE?

A. Yes. As I indicated previously, there is a monthly total cost of $1,129.16 for the DS1, from the CLEC to the customer location eighteen miles away, when purchased as special access from Ameritech. The similar price under EELs is $90.23 per month, for exactly the same circuit, in exactly the same circumstances. Next, CLECs must pay Ameritech for M1/3 multiplexing. This is the electronic box that allows a DS3 to be split up into 28 DS1s. On the market today, CLECs can buy an M1/3 mux for from $900 to $1,100, total price. Using an old industry rule-of-thumb, if you want to convert the capital cost into a monthly cost, multiply times 0.025. If you want to cover both the capital-and-interest and maintenance costs, multiply times 0.035. So take the midrange price of $1,000, and

multiply times 0.035, and we get a monthly cost of $35 per month that would be a reasonable price at which Ameritech would rent an M1/3 to LDMI, including its operating and maintenance costs. But naturally, Ameritech has bigger and better ideas, under "whatever we can get away with" pricing. So on page 414, in Michigan Zone 3, under month-to-month pricing, Ameritech rents the M1/3 as a USOC code QM3X3 "interconnection – central office multiplexing – per arrangement – Ameritech DS3 to Ameritech DS1" for a lofty $810.00 per month. So to avoid that incredible hit, a CLEC may instead rent its M1/3s from Ameritech under 60-month Optional Payment Plan (OPP) terms, where the monthly price is "only" $500.00 per month (one half the purchase cost of the equipment).

Q. WHAT SHOULD THE COMMISSION DO TO ALLEVIATE THIS EXTRA CHARGE?

A. For Special Access services utilized by CLECs and other Carriers, and for similar services under EELs, the MPSC should mandate the reduction of the monthly price for an M1/3 Mux to its reasonable cost plus profit, of $35.00 monthly.

Q. HAS AMERITECH TAKEN ADVANTAGE OF THE UNBALANCED PRICING OF DS1s AND DS3s?

A. Yes. While Ameritech and the Commissions have insisted CLECs should purchase DS1s for customers out of Ameritech Tariff F.C.C. No. 2 at ridiculously inflated prices, Ameritech has taken quite another tack with customers and users who it does not view as competitors. Ameritech, in the last few years, has quietly signed various private ICB

(Individual Case Basis) contracts with ISPs, individual large customers and others, at prices dramatically lower than the prices which Ameritech charges a CLEC. Under ICB terms, an ISP or Ameritech 5-star distributor or other favored Ameritech customer can get a DS1 that costs a CLEC $1,129.16 under month-to-month terms, or $502.86 under a 60 month OPP commitment, for about $199.00 per month. And instead of a $1,493.00 installation charge, or $75.00 under 60 month OPP terms, the favored customer under ICB terms often has an installation charge from Ameritech of zero. And it appears that in Texas, SBC's Southwestern Bell makes the same DS1 circuit available to users of the "Tex-An 2000" network for $170.00 per month.[59]

Q. HAVE YOU ADDRESSED THE ICB ISSUE WITH AMERITECH?

A. Yes. On August 24, 2001, LDMI sent an e-mail to the SBC/Ameritech vice president responsible for LDMI, for both long distance and CLEC services. Among other issues, the e-mail said, "...attached is an example of an Ameritech T1 (DS1) deal, where LDMI would like one [under the] same or better [terms]." It listed, in specific detail, all the relevant terms, conditions and prices, of an ICB contract in Michigan, between Ameritech and a favored distributor or ISP, where the monthly price – in the same conditions of the example above – totals $199.00, and the installation charge is zero. See Exhibit JWF-7 (C-__). On August 28, 2001, LDMI met with that SBC/Ameritech vice

[59] See www.texan.state.tx.us/swb_transport_pricing.htm, the section on "SWB Point-to-Point Access Pricing". It appears that the $170.00 per month price applies to "DS1 Access, 1 – 29 Miles". The TEX-AN 2000 network may be used by all Texas state agencies, the state legislature, state and community colleges and universities, city and county governments, and similar institutions.

president, along with her respective Directors on the long distance and CLEC side. In response to LDMI's request for such a DS1 deal, SBC/Ameritech responded as follows: (1.) it is similar or identical to one or more ICB deals we have done in Michigan; (2.) such deals are available only to ISPs (Internet Service Providers), and cannot be offered to LDMI, because under our definition, LDMI is not an ISP; (3.) it can be offered to ISPs, because ISPs use such DS1s for Internet Access for their customers, and we define such Internet Access by ISPs as "local" traffic, that qualifies for intrastate Michigan, "ICB" pricing; (4.) to order such a circuit, under those prices, a qualifying ISP specifies on their order for service a PIU (percent interstate usage) factor of zero, and that triggers the assumption that the circuit qualifies for intrastate "Individual Case Basis" prices, under the extremely favorable rates as described.

Q. HOW DID YOU RESPOND?

A. LDMI responded that it would be happy to specify a PIU of zero on DS1 orders, where applicable, to obtain the same rates. SBC/Ameritech responded that the special pricing was only applicable to favored ISPs, not to CLECs or IXCs. LDMI pointed out that SBC/Ameritech, under its EELs tariff in Michigan, and in its Mi2A contract for Michigan, specifically EXCLUDES "Internet Access" from the categories of service that qualify the CLEC to order EELs service – that SBC/Ameritech has asserted that the ONLY service qualifying a CLEC for ordering EELs is "local dial tone". Said LDMI: this clearly represents illegal discriminatory behavior on the part of SBC/Ameritech, vis-à-vis ISPs and CLECs. To this, SBC/Ameitech did not reply. Certain ISPs and others are thus able to quote their customers ***retail*** prices for DS1s (e.g., $199 per month), which

are well below LDMI's underlying ***costs*** for DS1s. Some ISPs have even entertained reselling such capacity to LDMI with a markup, only to back off when they realize Ameritech would probably not allow such an arrangement. On the same distance DS1 circuit (18 miles) that costs over $500/month on a five-year commitment from Ameritech Michigan, and over $1,100/month on a month-to-month arrangement, EarthLink is able to offer a "DS1 Local Loop, 11-20 miles, for $299 monthly, and a zero installation charge, based on a one-year term. [See http://www.earthlink.net/biz/broadband/dedicated/pricing/.]

Q. HOW ARE T1 PRICES TRENDING NATIONALLY?

A. There is evidence that T1 prices nationally are now being significantly (but selectively) reduced. See, for example, "T1 Price Drop Means Good Deals for Smart Shoppers", InformationWeek.Com News, December 18/25, 2000: "The evidence is everywhere—in newspaper ads, radio spots, and Web banner ads – that prices for local T1 (1.5 Mbps) access lines are on the way down. What cost [thousands] a month a few years ago, can now be had for as little as $150..."[60]

Q. IS THIS TREND AFFECTING ACCESS PRICES FOR CLECs?

A. No. However, the same article goes on to observe, "Market cynics point out that the regional Bell and other local telephone companies... have been relatively passive with regard to T1 access pricing... [they are] keeping their prices high... ...In some cases, the

[60] Yuki Noguchi, Washington Post Staff Writer, September 11, 2001, page E01, "Verizon records first drop in phone lines".

[Bell companies] are even raising their prices... ....The established carriers [Bells] aren't really responding... they really don't care... Pricing for a basic T1 line averages $300 to $500 a month..." [www.informationweek.com/817/teeone.htm]. And a recent article in the Washington Post quotes Dan McBride, an analyst with H&R Block Financial Advisors in Detroit: "The Baby Bells are still a quasi-monopoly; they're very entrenched in the local markets..." The article notes McBride as observing that many of the Baby Bells' local competitors have declared bankruptcy or have gone out of business, so "...I think in the long term [the Baby Bells are] going to do well." A study entitled "The economics of the Internet: Utility, utilization, pricing and Quality of Service" by Andrew Odlyzko notes that "While the technical press is full of stories about progress in fiber optic technologies, network managers have had to face rising prices for data transmission capacity over the last half a dozen years... [a study] shows the historical record of T1 prices, which decreased by a factor of 5 from 1983 to 1992, but have gone up by about 50% since 1992 (in nominal dollars)...[61]

Q. HAS LDMI PERFORMED ITS OWN STUDY?

A. Yes. LDMI has performed a study[62] comparing the rates for Ameritech Michigan "special access" DS1 (T1) service, comparing the rates in effect as of June 1993, as compared to the rates now in effect as of July 3, 2001 and subsequent. The current rates are those contained in Ameritech's Tariff F.C.C. No. 2, which are applicable in the

[61] A.M. Odlyzko, "The Economics of the Internet: Utility, Utilization, Pricing, and Quality of Service", July 7, 1998.

[62] See Exhibit JWF-8 (C-__).

interstate jurisdiction, and since the MPSC has not proscribed different rates, these also are the rates applicable in the Intrastate Michigan jurisdiction. The June 1993 rates were the similar applicable rates of Ameritech Michigan at that time, as noted in LDMI's files. The comparison, and those comparisons immediately below, were for a simple DS1 consisting of channel terminations, channel mileage termination(s), and channel mileage based on an airline distance of 18 miles (LDMI's assumed average), and for Zone 1 (lowest-priced zone), and for Zone "X" (highest priced zone). The results show that for the highest-priced zone under month-to-month pricing, Ameritech Michigan has hiked rates by over eighty-five percent: from $867.68 monthly in 1993, to $1,609.80 monthly today. Under a five-year OPP (optional payment plan), the 1993 monthly total was $603.38, which has increased to $620.80 today. Whereas month-to-month was priced as a multiple of 1.44 times the 5-year price in 1993, today, Ameritech has maneuvered the month-to-month rate to a huge multiple of 2.59 times the 5-year-term price. Assumed reason for this action: to force carriers like LDMI Telecommunications to sign up for 5-year term pricing, thus locking those carriers in to Ameritech for the long-term, in an anti-competitive way. The results also show that for the lowest-priced zone under month-to-month pricing, (Zone 1), Ameritech Michigan has hiked rates by over forty percent: from $867.68 monthly in 1993, to $1,218.00 monthly today. Under a five-year OPP (optional payment plan), the 1993 monthly total was $603.38, as compared to $482.40 today. Whereas month-to-month was priced as a multiple of 1.44 times the 5-year price in 1993, today, in Zone 1, Ameritech has maneuvered the month-to-month rate to a lofty multiple of 2.52 times the 5-year-term price. Assumed reason for this action: to force carriers like LDMI Telecommunications to sign up for 5-year term pricing, thus locking

those carriers in to Ameritech for the long-term, in an anti-competitive way. During this same time period, June 1993 to July 2001, FCC data show that the national average in cents per minute of Interstate Per-Minute Access Charges, reflected in a "total charge per conversation minute", have dropped from the 6.76 cents per minute in 1993, to the new figure of 1.71 cents per minute starting in July, 2001.[63] So, as access costs have been reduced, and subsidies moved from long distance carriers to local exchange carriers, overall switched access rates have declined by an impressive 74.7 percent. But the same, clearly, cannot be said of Ameritech Michigan's DS1 prices, charged of carriers like LDMI, over the same time period. The Ameritech "special access" prices for DS1s, DS3s, etc., should reflect the overall huge reduction in access prices as mandated by the FCC during the 1980s and 1990s, ***but they do not.***

Q. HAS LDMI DONE A COMPARISON OF AMERITECH'S DS1 PRICES WITH THOSE OF OTHER RBOCs?

A. Yes. With the assistance of telecommunications tariff consulting firm Technologies Management, Inc., LDMI has made a similar comparison of the current DS1 prices of Ameritech Michigan, and those of the other RBOCs[64]. The findings: overall, Ameritech's DS1 rates, charged in its Special Access FCC tariff to carriers such as LDMI, are higher than those of the other RBOCs – sometimes dramatically higher. As to month-to-month pricing in Zone 1, Bell South (for Georgia and all its other states), again

[63] Industry Analysis Division, Common Carrier Bureau, FCC, "Trends In Telephone Service, August 2001", Table 1.2.

[64] See also Exhibit JWF-9 (C-__).

at the 18-mile distance, is $685.50 monthly, versus Ameritech Michigan at $1,218.00; Ameritech's price is 77.7% higher. For a five year term, Bell South is $446.00, and Ameritech Michigan is $482.40, 8.2% higher. In the highest-priced zone, under month-to-month pricing, Qwest (for Colorado, and its other states) is $666.00 monthly versus Ameritech Michigan at $1609.80 monthly, or 141.7 percent higher. For a five-year term in the highest-priced zone, Qwest is $513.00 and Ameritech is $620.80, or 21 percent higher. Versus Bell Atlantic South in the highest price zone, for month-to-month, Ameritech Michigan is 94.3% higher, and for a five-year term, 23.5% higher. While there are exceptions to the above, where Ameritech Michigan is occasionally slightly lower, the overwhelming conclusion is: Ameritech has gotten away with higher DS1 pricing than the other RBOCs. For the other RBOCs, their month-to-month prices in the study were anywhere from 1.30 to 1.65 times as high as their five-year-term prices, whereas for Ameritech Michigan, the multiples such that month-to-month prices were from 2.52 to 2.59 times the five-year-term prices. It is unclear how multiples of 1.30-1.65 can be justified, based on costs or other valid ratemaking principles. But as to multiples of 2.52-2.59, the clear, crass intent becomes clear: Ameritech does not intend its "special access" DS1 prices to be cost-based, or based on public interest considerations. The clear intent is to act as an anti-competitive barrier to entry, with respect to CLECs and other competitors.

Q. ARE THERE EXCEPTIONS IN AMERITECH'S MICHIGAN SPECIAL ACCESS TARIFF?

A. A section of the Ameritech Michigan Tariff MPSC No. 20 provides for exception pricing to that of Ameritech's Tariff FCC # 2 with respect to Special Access pricing. The FCC allows pricing of special access rate elements down to the level of average variable cost[65], and indeed, the Federal Act expressly provides that states may continue to impose pro-competitive requirements on local exchange carriers under state law. Section 261(c) states: "Additional State Requirements – Nothing in this part precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access, as long as the State's requirements are not inconsistent with this part or the Commission's regulations to implement this part." 47 U.S.C. § 261(c). Thus, '[u]nder Section 261(c), state commissions are explicitly permitted to impose requirements to further competition for intrastate services...."[66] This also would not be the first time that regulators have concluded that special access pricing of one or more of the SBC companies have been discriminatory, and unreasonably discriminatory.[67]

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[65] E.g., Policy & Rules Concerning Rates for Dominant Carriers, 4 FCC Rcd 5384 (1989); Policy & Rules Concerning Rates for Dominant Carriers, 6 FCC Rcd 665 (1991).

[66] *Michigan Bell Tel. Co. v. MCI Metro Access Trans. Servs., Inc.*, 128 F. Supp.2d 1043, 1058 (E.D. Mich. 2001).

[67] In an order, DA 95-1847 dated August 22, 1995, the FCC rejected a special access tariff filing of Southwestern Bell. Noted the FCC, "Under Section 202(a) of the Communications Act, SBC cannot "make any unjust or unreasonable discrimination" in "charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service..." In deciding whether any "unjust or unreasonable discrimination" has occurred, the Commission and the courts have generally applied a three-part test. The test involves, first, a comparison of the services provided to determine if "like" services have been offered by the carrier to different customers. Second, a determination is made as to whether "like" services have been offered by the carrier under different terms or conditions. Third, if different terms or conditions of service have been offered to different customers for "like"

Q. WHAT SHOULD THE COMMISSION DO ABOUT EELs RESTRICTIONS?

A. Part of today's problems (anti-competitively high rates for DS1s/DS3s, and anti-competitive ILEC-imposed rules and restrictions on usage) could be alleviated if the Commission required Ameritech to provide an EEL directly under tariff, without restrictions on use, as the CLECs have repeatedly requested in the Section 271 collaborative. Until EELs can be provided, and made available without these unreasonable restrictions on use, a significant hurdle to effective competition for local service will remain.

Q. PLEASE EXPLAIN FURTHER THE ASSOCIATION'S INTEREST IN EELS.

A. The CLEC Association's interest in the enhanced extended link issue arises from the fact that many of its members represent an emerging class of competitive carriers, the "integrated communications provider" (ICP). These carriers expect to compete in the future by offering a wide range of services and packages without regard to pre-1996-Federal-Telecom-Act distinctions such as "local", "long distance", and "exchange access". An ICP seeks to provide whatever services the customer needs, in whatever

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services, a determination must then be made as to whether the different terms or conditions are just and reasonable under the circumstances. Applying this analysis to the instant transmittal, we conclude first that althrough the SBC DS3 service offered to its Vintage Service customers has a different rate structure, it is not just "like" the services provided to other SBC customers, but, in fact, appears to be an identical service. We next conclude SBC's proposed Vintage Service rates are discriminatory because they discriminate against new customers who are not allowed to take service under the old Vintage Service matrix rate structure, as well as those Vintage Service customers whose DS3 arrangements have expired. ...we conclude that SBC has not justified the discriminatory treatment that would continue between its customers if the Vintage Service arrangements were extended... the SBC transmittal thus is patently unlawful and is rejected."

arrangement it believes is the most useful to the customer. This often will lead to a service package that does not easily fit in one (or more) of the traditional categories or may not include every element of traditional services. A "boundary-free" ICP market, however, will only be possible if entrants are free to use UNE facilities without ***any*** restriction as to the services that will be offered. In particular, restrictions that strive to perpetuate preconceived boundaries drawn on yesterday's industry model cannot be tolerated. Innovation would be frustrated by any environment where ILEC-imposed restrictions require that entrants conform services to conventional definitions and perceptions before they may access the network elements they require to offer their services. It is simply impossible to prejudge which arrangements, and which competitive strategies, are best suited for a particular market or carrier. Ameritech's current EELs tariff and Mi2A contract restrictions improperly restrict and deny the use of EELs for voice services that are not specifically "local dial tone", and also restrict and deny the use of EELs for data services of any kind. This flies in the face of industry studies on broadband, which find that "The integration of voice and data service delivery will soon become the norm, and end users will demand these advanced servcies at costs far below today's offerings from incumbent service providers [for] current and future broadband services, such as switched voice, high-speed data services, and high-speed Internet access."[68]

[68] James Im, distinguished member of consulting staff, Lucent Technologies Worldwide Services, "Providing Local Broadband Services: a Review of Five Last-Mile Technologies", at pages 5 and 3.

Q. PLEASE DESCRIBE THESE RESTRICTIONS.

A. In an effort to justify restrictions on the use of the extended link (EEL), Ameritech and the ILECs have made two basic arguments. First, they claim that special access services support universal service and that an unrestricted EEL would erode this support. However, there is ***no*** evidence that universal service concerns have played ***any*** role in special access pricing[69]. Use restrictions placed on EELs are not necessary to protect universal service, because there are no universal support subsidies in special access (or today, even in switched access) rates[70]. Second, Ameritech and the ILECs have claimed that placing restrictions on the EEL would promote more local competition by encouraging facilities construction. But there is no reason to expect an EEL to materially change conventional network investment decisions. To the contrary, an EEL network element would foster network development by accelerating entry, improving network efficiency and expanding the effective "footprint" of competitive networks. Further, by conserving scarce central office collocation space, an unrestricted EEL could actually promote the development of the advanced data services that depend upon such space to compete. Some have speculated that EELs might create an incentive for carriers to migrate from switched access service to EELs. However, that concern does not have even theoretical validity. The amount of traffic that migrates from switched access to special access is irrelevant because today, there are no universal service subsidies in switched access rates. However, even if there still were implicit subsidies in switched

[69] Comments of the Competitive Telecommunications Association, CC Docket No. 96-98 (filed January 19, 2000) at 4-8.

[70] *Access Charge Reform,* 14 FCC Rcd 14221, ¶ 8 (1999) (*Access Reform Fifth Order).*

access rates, the steep reduction in per-minute switched access charges that resulted out of the 2000 implementation by the FCC of the CALLS proposal (and similar mirroring of rates in Michigan) sharply reduced any incentive to migrate from switched access to special access. Accordingly, there is no empirical data of any kind to support speculation that unrestricted use of EELS any any possible traffic migration can provide any harm. Further, there is no need whatever to give Ameritech Michigan a transition period in order to adapt to the loss of revenues from supra-competitively (anti-competitively) priced special access services. Ameritech Michigan has already had over five years since passage of the 1996 Act – and about two years since the FCC's *UNE Remand Order* – to adjust to a lesser revenue stream. Moreover, the studies by LDMI show that the likely effect of removing use restrictions on EELs in Michigan is not to re-price existing DS1 and DS3 circuits, but to begin to respond to the huge latent demand for broadband services which in Michigan has yet to be realized.

Q. IS COMMISSION PROTECTION OF SBC/AMERITECH'S SPECIAL ACCESS NECESSARY?

A. No. In addition to being unnecessary, protection of Ameritech Michigan's high special access rates actually destabilizes emerging competition in the special access market segment. The FCC recently granted several petitions for flexibility in the pricing of access services by certain ILECs,[71] one of them being Ameritech Michigan. Ameritech

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[71] See, *Petition of Ameritech Indiana, Ameritech Michigan, Ameritech Ohio and Ameritech Wisconsin for Pricing Flexibility,FCC, DA 01-670 (released March 14, 2001).*

Michigan can now cross-subsidize their special access services subject to pricing flexibility *where they face competition,* using revenue from high special access rates where they face *no* competition. Thus, the incentive has been created for Ameritech Michigan to engage in anti-competitive price discrimination through EELs use restrictions. Congress, in the 1996 Telecom Act, gave plain and unambiguous language indicating it would not tolerate any type of restriction on the use of UNEs[72]. But despite the theoretical availability of EELs in the last several years, as CompTel recently pointed out, "EELs have largely been unavailable to competing carriers for ***any*** services"[73]. The only effect of EEL use restrictions in Michigan is to guarantee Ameritech Michigan a certain revenue stream from their tariffed special access services. However, protecting ILEC revenues should not be a policy objective for the Commission. The goal of the Commission must be to promote competition, not to protect incumbent monopoly profit streams.

Q. WHAT ABOUT EELs RESTRICTIONS ON IXCs?

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[72] Use restrictions on UNEs are inconsistent with the plain language of the Federal statute: 47 U.S.C. § 153(29): The statute defines a "network element" as a "facility or equipment used in the provision of a telecommunications service... include[ing] features, functions, and capabilities that are provided by means of such facility or equipment." And Section 251©(3) imposes upon ILECs the "duty to provide" access to network elements "to ***any*** requesting telecommunications carrier for the provision of ***a telecommunications service...***" [See 47 U.S.C. §251(c)(3) (emphasis added).]

[73] April 30, 2001, "Reply Comments of The Competitive Telecommunications Association [CompTel]", before the Federal Communications Commission, regarding "Comments Sought on the Use of Unbundled Network Elements to Provide Exchange Access Service, CC Docket No. 96-98, Public Notice, DA 01-169 (rel. Jan. 24, 2001). To support its statement, CompTel said, "See, *e.g.,* Comments of AT&T at 3-4, 18-19; Joint Comments of Cbeyond, e.spire, KMC, Net2000, WinStar and XO at 3-6; Comments of Focal at 3-7."

A. Restrictions that suggest that EELs should not be used by CLECs who are also IXCs are also inconsistent with the plain language of the Federal statute. Section 251(c)(3) imposes upon ILECs the "duty to provide" access to network elements "to ***any*** requesting telecommunications carrier for the provision of ***a telecommunications service***" (see previous footnote), and Section 251(d)(2) in turn requires Commissions to determine which particular network elements ILECs must make available "for the purposes of section 251(c)(3)," that is, "for the provision of a telecommunications service." Therefore, the statute expressly requires the Commission to unbundle the network on an element-by-element basis and Ameritech Michigan to provide access to these unbundled network elements to "***any*** requesting telecommunications carrier" so long as the carrier uses the network element to provide "a telecommunications service". There is ***no*** basis in the Federal statute for conditioning access to network elements based on the type of telecommunications service that the requesting carrier will provide using the network element. The FCC reached this same conclusion in the *Local Competition Order*, which it reaffirmed in the *Third Report and Order* of 1999. In the *Local Competition Order,* the FCC held that the statute "permits interexchange carriers and all other requesting carriers, to purchase unbundled elements for the purpose of providing exchange access services to themselves in order to provide interexchange services to consumers." [*Local Competition Order* at ¶ 356; *UNE Remand Order* at ¶ 484]. The FCC explained that access to unbundled network elements cannot be conditioned upon the requesting carrier offering local servcie to its customers because "the plain language of Section 251(c)(3) does not obligate carriers purchasing access to network elements to provide all the services that an unbundled element is capable of providing or that are typically provided

over that element" or "impose any service-related restrictions or requirements on requesting carriers in connection with the use of unbundled elements." [*Local Competition Order* at ¶ 264].

Q. ARE THERE OTHER REASONS THE USE RESTRICTIONS SHOULD NOT BE APPLIED?

A. The use restrictions are also fundamentally inconsistent with regulatory application of the impair standard, as well as the MPSC's competitive policies. Those restrictions not only have decreased the speed with which competition is introduced and reduced certainty in all markets due to likely disputes about whether a competitive carrier meets the qualifications, but also have emboldened Ameritech Michigan to refuse to provide EELs to virtually ***any*** requesting carrier. Accordingly, few if any carriers in Michigan have been able to integrate EELs into their business plans, even if they provide a "significant amount of local service", and entry is delayed because carriers do not have accurate information about the availability of EELs. Moreover, the illegal use restrictions interfere with facilities-based competition because they generate inefficient entry and investment decisions. In any event, the illegal use restrictions are simply not practical from an administrative standpoint because they focus on factors that are beyond the ability of the requesting carrier (and for some options, even the customer) to control or know.

Q. HAS AMERITECH IMPOSED REQUIREMENTS ON TARIFFED SPECIAL ACCESS CONVERSIONS TO EELs AS WELL?

A. Yes. An EEL conversion is nothing but a billing change, to take into account TSLRIC pricing. But Ameritech has insisted on implementing a conversion request by taking a much more drastic action, action that more resembles a "hot cut", and which thereby endangers customer service. The theory that Ameritech has the right to operate separate networks for UNEs is profoundly illegal and anticompetitive. The Commission needs to plainly reject this contention in a comprehensive and forceful way regarding EELs. Ameritech has insisted upon unjustifiably dangerous EEL conversion processes. As noted above, an EEL conversion was supposed to be no more demanding that a simple billing change. However, Ameritech has turned the EELs conversion process into a game of Russian roulette, with the gun barrel pointing at the head of the CLEC customer. As ALTS (Association for Local Telecommunications Services) has noted, "Ameritech insisted upon using a conversion system with a substantial risk of downstream disconnections. After pressure from Focal and e.spire, Ameritech subsequently implemented a system that seemed (incorrectly) to be less risky. When the new system was used by NuVox, however, it disconnected end users at a rate so alarming that Ameritech advised Focal not to risk using it."[74]

Q. WHAT HAS BEEN THE IMPACT ON CONSUMERS?

A. Ameritech's insistence upon gratuitously harming CLEC customers would be outrageous by itself. But they have added economic insult to customer injury by insisting that they

[74] *See Ex parte* Letter of Jonathan Askin, General Counsel, Association for Local Telecommunications Services, to Dorothy Attwood, Chief, Common Carrier Bureau, Federal Communications Commission (July 26, 2001).

will not implement the reduced EEL rate until a CLEC's conversion order has run this provisioning gauntlet.[75] Ameritech has offered no reason why the economic effect of a valid CLEC EELs conversion must await the Ameritech creation of a new ordering system. Ameritech has offered no valid reason why it should be the policeman as to whether a CLEC qualifies for EEL treatment on a particular DS1 circuit. Ameritech has offered no valid reason why its tariff and Mi2A restrictions on EEL use, or EEL connections to other DS3s (etc.) are lawful and pro-competitive. Nor have they demonstrated they are entitled to impose unnecessary and customer-hostile provisioning burdens as part of the EELs conversion process. They chose to do this unilaterally.

Q. DO THE PRICING PROBLEMS EXTEND TO NONRECURRING CHARGES?

A. Yes. For many years, high and unjustified NRCs (non-recurring charges) of Ameritech, assessed against CLECs and other carriers, have been a substantial and illegal barrier to entry, and a barrier to the emergence of effective competition as required by the federal Telecommunications Act and the Michigan Telecommunications Act. At the Federal level, TELRIC cost-based pricing, and within Michigan, TSLRIC cost-based pricing has been required to assure that egregious and unjustified rates and charges do not continue. However, Ameritech has continued to try to slide unjustified NRCs past the MPSC's attention. In Michigan, DSL provider JAS Networks, Inc. has brought to the attention of the Michigan CLEC Association the outrageous NRCs which Ameritech is assessing against Michigan DSL providers. In Ameritech's Tariff M.P.S.C. No. 20R, Part 19,

[75] *Id.*

Unbundled Network Elements and Number Portability, Section 2, Unbundled Loops, the Non-recurring charges applicable to Analog and Digital loops are found on 4th Revised Sheet No. 8, effective October 3, 2000.[76] As shown on that page, the NRCs for turning up an Analog loop total $20.98, whereas the NRCs for turning up a Digital loop for DSL total an outrageous $421.33. For Analog service, the NRCs are Service Ordering Charges, Installation, per occasion per location, $3.16; and Loop Connection Charge, per termination, $17.82. But for Digital Loop, DS0 rates (as applicable for turning up a DSL line) the NRCs are Administrative Charge, per order per location, $107.16; Design and CO Connection Charge, per DS0, $74.94; and Carrier Connection Charge, per DS0, $239.23. Similarly, on the same tariff page, Ameritech lists NRCs, for DS1 loops, an Administrative Charge, per order per location of $136.82; a Design and CO Connection Charge, per DS1 of $339.17, and a Carrier Connection Charge, per DS1, of $209.19. Clearly none of these NRCs for DS0 digital loops (DSL, etc.) and DS1 digital loops, can be, or are, TSLRIC based.

Q. WILL COMMISSION ACTION NOW BRING FURTHER COMPETITION TO MICHIGAN?

A. Yes. As various studies and observers have noted, ***"America's stunning success in promoting the Internet revolution owes a major debt to determined regulatory action that encouraged all aspects of network openness and interconnection... [regulators] prevented telephone companies from dictating the architecture of data networks.***

[76] See Exhibit JWF-10 (C-__).

Otherwise, instead of broadband Internet connections, we would be headed for an ISDN world... Regulatory policy forced open access to networks whose monopoly owners tried to keep closed..."[77] A similar spirit of regulatory action is needed now from the MPSC in Michigan. Provision of EELs service without the unreasonable and unlawful restrictions on use will stimulate demand for advanced services, such as those which figure importantly in Governor Engler's priorities, and which today are unrealized for Michigan businesses and consumers because of Ameritech Michigan's high special access prices. As the Editorial page of the Indianapolis Star recently observed, "Ameritech built its phone system, from the copper lines going into your house to the massive trunking systems, with risk-free investment. Every dollar was recovered thanks to the regulated rate structure. In a sense, it's a public system just like our highway network. We should all have equal access to it."[78] The fact is, Ameritech Michigan has build fiber past virtually all the industrial parks and major buildings in its operating territory, and past many of the subdivisions as well. From there to smaller buildings and homes, pairs of wires exist which can provide DS1 (T1) service. And as a recent article observes, "Talk of a fiber glut heated up earlier this month when Wall Street analyst firm Merrill Lynch declared that only two percent to three percent of the nation's fiber is actually in use."[79] But the same article points out, "Research backs up the assertion that

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[77] Francois Bar, et al, "Defending the Internet Revolution in the Broadband Era: When Doing Nothing is Doing Harm", BRIE Working Paper 137, August 1999, http://brie.berkeley.edu/~briewww/pubs/wp/wp137.html [emphasis added.]

[78] The Indianapolis Star, Editorial, September 3, 2001, "Ameritech must be forced to compete".

[79] Stephen Lee and Jennifer Jones, Shining Light on dark fiber, InfoWorld, July 27, 2001.

demand remains high for fiber and its broadband equivalent. Forrester Research in Cambridge, Mass., reported that 82 percent of the companies they polled expressed a need for more bandwidth for next-generation applications, including streaming video, optical storage, mobile data, and b-to-b partnerships." Ameritech has the capacity to provide immense amounts of new T1 capacity to businesses and homes. Only Ameritech's unreasonable and unlawful pricing, and unreasonable and unlawful restrictions on use, stand in the way of stunning new progress. Therefore, we respectfully request the MPSC to lift any and all EEL use restrictions, forthwith, and to require very low and cost-based nonrecurring charges on EELs.

Q. WHAT OTHER RECOMMENDATIONS DO YOU HAVE FOR COMMISSION ACTION?

A. The CLEC Association urges the Commission to take this opportunity to promulgate a broader interpretation of its current rulings on UNE combinations. As CLECA has previously argued, and as the Commission itself has held, the prohibition on Ameritech Michigan's separation of UNEs that it "currently combines" and "ordinarily combines" can and should be read to apply to any UNEs which Ameritech Michigan normally or typically combines in its network. Such an interpretation would eliminate the current obstacle of having carriers first order the EEL functionality as a tariffed special access service and then convert the service as a pre-existing combination to an EEL. This cumbersome process not only adds cost and delay to the process of obtaining EELs, it affords Ameritech Michigan yet another opportunity to thwart EELs altogether by refusing to provision the special access services in a timely manner or to convert existing

services to EELs. The time is now ripe for the Commission to clarify the proper scope of the "ordinarily combines" standard, to remove the impediments to competitive entry posed by the unduly narrow interpretation of the rule which prevails today.

Q. WHAT SHOULD THIS COMMISSION DO TO REMEDY THESE SPECIAL ACCESS ISSUES?

A. The MPSC can and should order the creation of exception pricing of DS1 and DS3 special access pricing for intrastate Michigan circuits using TSLRIC pricing. As a temporary expedient, in order to provide action ***now*** to alleviate the illegal and anti-competitive special access pricing of Ameritech Michigan noted above, the MPSC should implement temporary exception pricing for intrastate special access, set as the EELs TSLRIC monthly prices already established, plus a 20% add-on for additional profit and miscellaneous. This would put the cost to carriers of a typical 18-mile DS1 at about $90 monthly plus 20%, or $108 monthly. The total non-recurring charge should not exceed $50.00, the NRC for an Ameritech special access DS1 under 5-year-term pricing today.[80]

[80] Ameritech, for DS1 services in its FCC special access tariff, has NRCs ("Installation and Rearrangement Charges" in three categories: "Administrative Charge, per order", "Design and Central Office Connection Charge, per circuit", and Customer Connection Charge, per termination". For Michigan, for DS1s under 60-month terms, in any of the five rate Zones (1 through 5), the Administrative Charge, per order is $50.00, the Design and Central Office Connection Charge, per circuit is $ 0.00, and the Customer Connection Charge, per termination is $ 0.00 – total NRC per Installation order, irrespective of the number of circuits on the order: $50.00. See Ameritech Operating Companies, Tariff F.C.C. No. 2, 2nd Revised page 445.1.1.3, Effective July 3, 2001, and 2nd Revised Page 445.1.1.4, Effective July 3, 2001. CLECs and carriers who order special access and other DS1s, DS3s, etc. from Ameritech are the highest-volume customers by far, and should therefore represent the lowest costs and the lowest revenue requirement for NRCs of any class of Ameritech customer, and therefore should be afforded NRCs equal to or lower than those as specified on these two tariff pages.

Sample tariff exception sheets to implement this interim measures are attached as Exhibit JWF-11 (C-__). Further, the CLEC Association respectfully requests the MPSC to take the following action: (1.) on an interim basis, require Ameritech to reduce the NRCs for DS0 and DS1 Digital loops, on this and any other applicable tariff pages, to the same NRC amounts shown for Analog loops on this tariff page (20R, Part 19, Section 2, Sheet 8); and (2.) institute a TSLRIC proceeding for determining permanent NRCs to replace the interim NRC figures.

COUNT IX. AMERITECH IS BLOCKING BROADBAND DEVELOPMENT

Q. IS AMERITECH BLOCKING THE DEVELOPMENT OF BROADBAND?

A. Yes. Ameritech is interfering with those carriers seeking to provide broadband, as set forth in Mr. Schoen's testimony, and is reneging on its own commitments to make DSL available.

Q. PLEASE EXPLAIN IN WHAT WAY AMERITECH IS RENEGING ON COMMITMENTS.

A. As to DSL, SBC/Ameritech's promises and track record should be of particular concern to the MPSC. Around the time of the planned acquisition of Ameritech by SBC, SBC announced its DSL initiative: "The initiative – called Project Pronto – is the first of many SBC will undertake to secure the benefits of its recent acquisition of Ameritech for customers and shareholders... installing or upgrading 25,000 neighborhood broadband

gateways..." by the end of 2002.[81] In several decisions, the MPSC noted the 25,000-neighborhood gateway commitment.[82] Under "[SBC-Ameritech] Merger Information" on its website, SBC has said, "Many specific commitments were made before the merger completion in fall 1999... SBC Ameritech is keeping its promises... SBC is Going Broadband... Within days of the merger, SBC announced plans to make high-speed DSL service available to 80 percent of its customers nationwide, by the end of 2002."[83] SBC then said, "Pronto deployment continues to run ahead of original schedule. By the end of 2000, the company expects to have about 8,000 neighborhood gateways deployed."[84] In May 2000, SBC posted a spreadsheet on the Internet, showing the deployment schedules for ten thousand of the planned neighborhood gateways[85], in each of its major exchanges, in each of its states, and continued to publish the Neighborhood Gateway schedule for several months.[86]

Q. WHAT HAPPENED TO THOSE COMMITMENTS?

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[81] News Release, SBC Communications Inc., "*SBC Launches $6 Billion Initiative to Transform It Into America's Largest Single Broadband Provider", San Antonio, TX, Oct. 18, 1999.*

[82] See, for example, Case No. U-12540, March 7, 2001 Opinion and Order, page 3.

[83] SBC website, Merger Benefits, www.sbc.com/merger_benefits/0,2951,1,00.html.

[84] SBC Investor Briefing, April 25, 2000, No. 217, page 5.

[85] Tom Nolle, "*NPN: The RBOCs' Roadmap To Tomorrow's Access Network*", Network Magazine, April 5, 2001, www.networkmagazine.com

[86] As reported by DSL Reports, this was an Excel spreadsheet, "pronto_gateway.xls", posted 07-19-00. http://pittsburgh.dslreports.com/shownews/286.

A. SBC Chairman Whitacre decided to cut back on neighborhood gateway deployment in the Ameritech region: "Whitacre said pressure by state utility regulators in [the Ameritech] region over service complaints to improve the quality of service has prompted a 'later than expected start in the installation of neighborhood gateways, which have affected the ramp up of our DSL deployment in that region.' "[87] To avoid embarassing state-to-state comparisons of neighborhood gateway deployment, SBC withdrew the Neighborhood Gateway deployment schedule spreadsheet from its website.[88] On December 20, 2000, SBC put out an Accessible Letter to Ameritech-area CLECs, indicating that the location information and schedule for Neighborhood Gateways had been removed from its public location, and moved to a CLEC-only area, where the Neighborhood Gateway schedule information can now be found.[89] But today, in November 2001, when Michigan CLECs access the SBC CLEC website using the procedures as indicated, no Neighborhood Gateway deployment schedule can be found.[90]

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[87] Dan Luzadder, Interactive Week, "SBC Trims Earnings Forecast", ZDNet News, December 19, 2000.

[88] All links to the pronto_gateway.xls spreadsheet now fail. It cannot be found in any Internet searches, or on the SBC public website, or on the https://clec.sbc.com website that is available to CLECs.

[89] SBC Accessible Letter No. CLEC00-190, dated 10/2/2000 for the Soutwestern Bell Telephone Company area, followed by SBC Accessible Letter No. CLECAM00-224, 12/20/2000 for the Ameritech region. Notes the Ameritech-region Accessible Letter, "Ameritech is changing the location of information on the deployment of Neighborhood Gateways...access... is through the CLEC website https://clec.sbc.com. The DTI home page will contain an icon (in the lower right quadrant) titled "Network Disclosure". Activating this icon will display a window at which Company, State and Wire Center CLLI information is input to obtain the desired listing [which includes full Neighborhood gateway information, per the Accessible Letter]."

The current number of SBC/Ameritech Neighborhood Gateways, for Project Pronto DSL service, would seem to be slim to none.

Q. HAS AMERITECH FURTHER RETRENCHED ON ITS BROADBAND PLANS?

A. Yes. In October 2001, SBC announced it was substantially cutting back on plans for Project Pronto. According to SBC spokesman Fletcher Cook, "the company is now re-evaluating both the expenditure and the timing of Project Pronto... a heavy regulatory burden... forced SBC to cut back, Cook said."[91] It also became clear that in the months leading up to October, 2001, only 300 additional Neighborhood Gateways had been deployed.[92] So while reasonable progress has been made on Neighborhood Gateway turnups for DSL by SBC in Southwestern Bell territory, and SNET territory, and Pacific Bell territory, the project now is coming to a nearly dead stop before Michigan gains the supposed promise of the SBC/Ameritech merger. For Ameritech Michigan, DSL apparently stands for "Delayed 'till Sometime Later".

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[90] Instead, when the https://clec.sbc.com website is viewed by Michigan CLECs, for Michigan Neighborhood Gateway information, up pops a "DTI Network Disclosure" form. While it has a "spreadsheet" for Michigan, including the category of "RT" [RT for Remote Terminal – just another name for Neighborhood Gateway], the spreadsheet is blank, and there is a statement given: "Important: Turn-up is now being disclosed at a DA [distribution area] level instead of an RT level. Therefore, Estimated Completion Dates are for a DA area onloy and cannot be assumed for all Das within a DSA (RT serving area.)" Apparent translation: if you were looking here to get a schedule of Neighborhood Gateway turnups for Michigan, you're out of luck.

[91] Stephen Lawson, IDG News Service, "*SBC to cut back DSL buildout plan*", 10/23/01, NetworkWorldFusion News, www.nwfusionl.com.

[92] Telephony magazine, "*Not So Pronto*", as reported by Intertech Publishing Corp., 10/29/2001.

Q. DOES THIS HAVE SIGNIFICANT IMPACT ON MICHIGAN?

A. Yes. The deliberate SBC elimination of Neighborhood Gateway schedules should be a most ominous sign to the MPSC. As recently noted by Carol Mattey, deputy chief of the FCC's Common Carrier Bureau, SBC – with specific reference to Project Pronto for DSL – "must publish a publicly available Plan of Record that includes an assessment of SBC's existing interfaces, business processes and rules, hardware capabilities, data capabilities and differences, and SBC's plan for developing and deploying enhancements to the relevant interfaces."[93] Most recently, the FCC on November 1, 2001 determined that SBC is apparently liable for a $100,000 forfeiture, regarding DSL answers or non-answers, to a 9/29/00 letter of inquiry from the FCC, which ordered SBC to provide DSL provisioning and maintenance data for its affiliated Internet service provider and for unaffiliated ISPs.[94] Said the Chief of the FCC's Enforcement Bureau: "We consider SBC's conduct in this case to be egregious because its failure to submit a sworn written response to the Bureau hinders the Bureau's investigation into SBC's possible discrimination in provisioning and maintenance of DSL – a technology vital to competition... Moreover, SBC's decision not to provide the requisite sworn statement here obstructs the Bureau's investigation into discrepancies in SBC's various

[93] Kim Sunderland, "*FCC Reviews SBC's Project Pronto*", Phone+ Magazine, December 2000, www.phoneplusmag.com.

[94] FCC, Enforcement Bureau, *In the Matter of SBC Communications, Inc. Apparent Liability for Forfeiture*, Notice of Apparent Liability for Forfeiture, File No.l EB-01-IH-0642, NAL/Acct. No. 200232080001, adopted November 1, 2001.

representations to the Commission. SBC's conduct strikes at the core of the Bureau's ability to perform its function... SBC apparently intentionally violated the order....".

A. REFUSAL TO RESELL DSL

Q. ARE YOU FAMILIAR WITH AMERITECH'S POLICY REGARDING RESALE OF DSL?

A. Yes. Ameritech refuses to resell or make part of the UNE combinations its DSL offering that it makes to end users. Ameritech argues that it does not have to offer this service because it only sells DSL transport to its ISP affiliate, and thereby is not selling DSL directly to the public. Ameritech also refuses to provide a customer with DSL service if that customer is obtaining voice service from a CLEC, thereby allowing Ameritech to market its DSL service as an "exclusive" that other CLECs cannot offer.

Q. DOES THIS HARM CLECs?

A. Yes, it harms any CLEC that wishes to serve a customer with Ameritech DSL service, especially in light of Ameritech's requirement that the DSL service be disconnected for 2 weeks or more if the CLEC only wishes to serve the basic local exchange lines.

Q. WHAT SHOULD THE COMMISSION DO TO REMEDY THIS SITUATION?

A. The Commission should find that the "low frequency" portion of the local loop is a subloop UNE, and that nothing in either the Line Sharing Order or Line Sharing Reconsideration Order precludes a competitor from purchasing the "low frequency" portion of the loop as a subloop UNE to provide voice service. [This would allow a

company to purchase the voice portion of the loop for half the UNE cost, and permit another carrier to provide DSL across the other portion of the line.] Second, the Commission should clarify that competitive local exchange carriers ("CLECs") using a UNE loop ("UNE-L") entry strategy as well as CLECs using a UNE Platform ("UNE-P") entry strategy may engage in line splitting arrangements with competitive DSL providers. Third, the Commission should clarify that once an ILEC qualifies a loop for DSL service – provided by either the ILEC or a CLEC – the ILEC may not assess an additional qualification charge on carriers that subsequently wish to provide service over the previously-qualified loop.

B. REFUSAL TO ADHERE TO THE *ASCENT* DECISION

Q. ARE YOU FAMILIAR WITH THE *ASCENT* DECISION CITED IN THE COMPLAINT?

A. Yes.

Q. IS AMERITECH PROVIDING THE ADVANCED SERVICES RESALE PROVIDED FOR IN THAT DECISION?

A. No. Ameritech instead takes the position that it is not required to resell services made available only through its advanced services affiliate.

Q. IS THIS A VALID POSITION?

A. No. Ameritech directly markets its DSL service to Michigan end-users and is holding itself out as offering DSL services to retail customers. Ameritech should not be allowed

to evade its responsibilities by hiding behind its corporate affiliates or by using corporate structure to confuse the issues. Through one company or another Ameritech is offering DSL to customers and DSL transport to ISPs. Those services must be offered for resale.

Q. WHY IS AVAILABILITY OF ADVANCED SERVICES IMPORTANT TO COMPETITION?

A. The demand for advanced services such as DSL is rapidly growing. According to a recent Yankee Group forecast, more than 31 million U.S. households will have broadband connections by 2005. DSL service, alone, is expected to grow to 10.5 million of those households within four years. [95] In anticipation of demand, CLECs must be able to incorporate advanced services into their own service offerings throughout the country in order to compete as full service providers. The availability of a viable DSL resale offering will more easily allow CLECs the option to bundle this offering with their own voice services and even perhaps with their own ISP without having to build near ubiquitous networks. Quite simply, the availability of such a resale DSL offering will allow more CLECs to complete a "bundled" package of voice, Internet access, and DSL. The lack of availability of a viable resale DSL offering will enable RBOCs to undermine competitive offerings and perpetuate their dominance in a burgeoning advanced services market.

[95] *Cable Modem Providers Continue to Lead the High-Speed Internet Charge,* The Yankee Group, September 2001.

Q. WHAT RECOMMENDATIONS DO YOU HAVE WITH REGARD TO THE *ASCENT* DECISION?

A. Ameritech advanced services resale is a critical element to promoting meaningful competition, enabling the public to realize the benefits of competition, and preventing tomorrow's communications services to remain dominated by today's incumbents. The Commission should compel Ameritech to demonstrate compliance with the Act's advanced services resale obligations, to test incumbent compliance through establishment of advanced services OSS testing and performance measures, and indicate to Ameritech that a favorable Section 271 recommendation will not be forthcoming unless and until Ameritech complies with these requirements.

AMERITECH'S CREDIBILITY IS LACKING

Q. DO YOU HAVE FURTHER INFORMATION ON AMERITECH THAT YOU WISH TO SHARE WITH THE COMMISSION?

A. Yes. In reviewing the testimony in this case and the likely testimony that Ameritech will file in this case, the Commission should review that material in light of Ameritech's history of a lack of credibility.

Q. DO YOU HAVE ANY SPECIFIC EXAMPLES THE COMMISSION SHOULD CONSIDER?

A. Yes. In an order released on October 16, 2001, the FCC proposes to fine SBC Communications, Inc. $2.52 million for "inaccurate" information supplied in the

Kansas/Oklahoma section 271 proceeding.[96] Among other things, the FCC has found that on December 11, 2000, while seeking to gain approval to offer interstate long distance service to customers in Kansas and Oklahoma, SBC submitted to the FCC three affidavits containing inaccurate information. After determining that inaccurate affidavits had been provided to the FCC, the FCC asked SBC how that could have happened. SBC responded to the FCC on April 6, 2001 that in reviewing draft affidavits prior to submission to the FCC, SBC's affiant "must have 'skipped' this [error]" because he reviewed the affidavit "late at night". After reviewing the evidence, the FCC concluded this assertion was patently false. Said the FCC, "Thus, it is apparent from the evidence that Mr. Mileham did not review Mr. Welch's affidavit late at night, as he claimed in his affidavit to the Commission. Based on the totality of the circumstances surrounding Mr. Mileham's inclusion of this incorrect statement in his affidavit, we conclude that he made the statement with the specific intention to mislead the Commission, not merely through inadvertence or mistake."[97] In another instance, the same affiant claimed that he had lost the e-mail of another SBC subject matter expert, one that was damaging to SBC's assertions to the FCC that the required "271" standards had been met, when in fact they had not. Said the FCC,

> "As an initial matter, neither Mr. Mileham nor SBC has explained how Mr. Mileham's e-mails could disappear from his work computer simply because he downloaded them from home. But even if this were the case, we do not find it credible that Mr. Mileham – whose previous job involved

[96] Federal Communications Commission, File No. EB-01-IH-0339, NAL/Acct. No. 200132080059, In the Matter of SBC Communications, Inc. Apparent Liability for Forfeiture, Notice of Apparent Liability for Forfeiture and Order, Adopted October 12, 2001, Released October 16, 2001.

[97] *Id,* paragraph 68.

> desktop computer support – not only lost approximately 300 e-mails in the first place, but failed to make the slightest effort to recover them, and failed to notify a single SBC employee – including his supervisors – about this important event. By his own account, Mr. Mileham uses e-mail extensively, referring questions and complaints from competing carriers to knowledgeable SBC employees, and relaying answers from those employees back to the competing carriers. Nevertheless, SBC contends that Mr. Mileham apparently took no corrective measures upon losing approximately three hundred unopened e-mails from people inside the company or competing carriers. Nor do we find credible Mr. Mileham's claim that he thought he had no obligation to try to recover the lost e-mails...we are not aware of any plausible explanation for Mr. Mileham's statements other than that they apparently constitute misrepresentation or willful omissions in violation of section 1.17. Thus, we conclude it is reasonable to infer that Mr. Mileham apparently intentionally engaged in misrepresentation. Mr. Mileham's apparent misrepresentations were material to the Commission's investigation... ***SBC has argued to the Enforcement Bureau that it has no responsibility for misrepresentations or willful material omissions by its employees within the scope of their employment during a Commission investigation.*** This claim is wholly without support under the Act or Commission precedent, and SBC has provided no authority for its assertion."[98]

The FCC noted that SBC has done all of this before:

> "SBC's conduct here appears particularly egregious because just two years ago, in June 1999, the company and the Commission entered into the *SBC/SNET Consent Decree,* which resolved a similar investigation. Like here, the investigation related to statements made by SBC employees before and shortly after the Commission granted an application. Both investigations involved a potential violation of section 1.65, a potential violation of section 271 of the Act (and section 272 in the case of the *SBC/SNET Consent Decree),* and whether SBC employees made intentionally inaccurate statements to the Commission... Nevertheless, less than two years after entering into this consent decree, SBC appears to have violated section 1.65(a) in a context remarkably similar to the one at issue in the *SBC/SNET Consent Decree.* Moreover, the violation occurred on a material issue in a major Commission proceeding against a backdrop of repeated Commission references to the importance of section 1.65 in section 271 proceedings like the one here. Section 271 proceedings are at the center of Congress' efforts to promote competition in the Telecommunications Act of 1996. They are the subject of significant litigation. For SBC to keep the parties and the Commission uninformed of

[98] *Id,* paragraphs 71 – 74. [Emphasis added.]

> material inaccuracies relating to its section 271 application is extremely serious."[99]

The FCC went on to fine SBC $2.52 million.

Q. PLEASE EXPLAIN THE IMPORTANCE OF THIS TO THIS COMPLAINT.

A. As this Complaint repeatedly makes clear, the credibility of SBC/Ameritech in Michigan is extremely low. Whether SBC cares if its statements -- to CLECs, MPSC Staff, MPSC Commissioners, Legislators, the Administration, the Press and the public – are believed or not, is subject to considerable question. We assert that the CLECs have demonstrated their credibility to the MPSC. We ask that the MPSC give weight to the arguments and testimony of the Michigan CLEC Association, and to scrutinize in the most careful way the statements of SBC/Ameritech. The public interest requires effective action by the MPSC to insure telecom competition in the state can take root and grow. The MPSC needs to take effective action to learn the truth, and to take effective action based on the truth, wherever that may lead.

Q. HAVE YOU AND OTHER CLECs ATTEMPTED TO REACH AGREEMENT WITH AMERITECH ON THE ISSUES ADDRESSED IN THE COMPLAINT?

A. Yes. Each of the issues in the counts listed in the complaint have been the subject of continuous interaction between the CLECs and Ameritech. The term contracts have been addressed with Ameritech, with the response that they can either be assumed under tariff, taken over after the contract period, or after payment of termination penalties. There has

[99] *Id*, paragraphs 57 – 59.

been no agreement. Most of the remaining issues -- including service quality, UNE-P provisioning and problems with UNE-P, inadequate UNE-P combinations, unavailability of voice mail with UNE-P, Mi2A issues, Special Access and EELs issues -- have been raised and rejected by Ameritech in the Section 271 Collaborative. The same issues and other issues - including roadblocks to DSL and resale of advanced services -- have been raised directly with Ameritech by individual CLECs. There has been no agreement on any of these issues.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes, it does.

SBC on UNE-P and TELRIC:

Claims Must Be Compared To Their Track Record

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12/19/02

The SBC Claim:

- **SBC PROFITS ARE FALLING:** Because of "below-cost... UNE-P" and wholesale prices which are "nuts"[1], SBC's profits are "falling like a rock".[2]

[1] Crain's Detroit Business 9/2/02, quoting Ed Whitacre of SBC.

[2] The Digest, 8/29/02, quoting SBC President Ed Whitacre's statement to the Detroit Free Press.

The Facts:

- For calendar year 2001, SBC was listed by Fortune as one of the thirty largest Fortune 500 companies.
  - For the "Fortune 30", year 2001, SBC had a profit margin (net income after tax, vs.revenues) of 15.8%, or ***more than three times*** the 4.6% recorded by the rest of the Fortune 30.

- And lest you believe SBC that things got worse in 2002:
  - For first quarter 2002, SBC's results actually ***improved***, to 16.3% (vs. 6.1% for the other Fortune 30).
  - Second quarter 2002, SBC improved ***again***, to 16.8%, or eight times the 2.3% recorded by the rest.
  - Third quarter 2003, SBC held at 16.8%, versus 6.1%; year to date 2002: SBC, 16.7% profit margin, versus 4.7% for the rest of the Fortune 30: ***SBC three times the profit margin of the rest***.[1]

[1] Fortune 500 data, Fortune, 2001. 2002 data compiled from MarketGuide/Provestor Plus Company Reports from multex.com.

The Facts on SBC Profits (cont.)

- SBC ***also*** is currently performing exceedingly well as compared to the ***rest*** of the ***telecommunications*** industry. Recent results:
  - Return on Assets – SBC 6.9%; Industry 0.9%
  - Return on Investment – SBC 9.0%; Industry 1.5%
  - Return on Equity – SBC 20.5%, Industry 4.0%
  - Operating Margin – SBC 20.6%, Industry 12.6%
  - Profit Margin – SBC 15.0%, Industry 1.7%.[1]

[1] MarketGuide/Provestor Plus Company Report, SBC Communications Inc., December 15, 2002.

The Facts on SBC's Profits (cont.)

- And according to SBC's chief financial officer, Randall Stephenson,
  - "our balance sheet is second to none right now...
  - "we are going to throw off just in excess of 3 billion dollars of free cash flow after dividends this year.
  - "The result of all that is I would tell you ***we're the best capitalized telecom business in the world***...
  - "when you compare us to our peers in this industry from just a pure financial position, we are ***second to none***....
  - "our ***free cash flow*** before dividends this year ***will nearly double what we achieved last year***."[1]

[1] Randall Stephenson, SBC CFO, Bank of America Securities Annual Investment Conference, Sept. 23-26, 2002.

The 2nd SBC Claim:

- **SBC PROFIT PROBLEM IS WORST IN AMERITECH REGION, PARTICULARLY MICHIGAN.[1]** "SBC, the Texas company that acquired Ameritech, maintains that its ***Michigan operations lost more than $1 billion during the last three quarters***."[2]

[1] Detroit Free Press 8/31/02; Chicago Tribune, 9/4/02; TR's State Newswire, 8/30/02; SBC's William Daley, letter to editor of Cleveland Plain Dealer, 9/17/02.

- [2] Detroit News Editorial, October 3, 2002.

The Michigan Facts:

- According to SBC figures filed in the FCC's ARMIS database, for calendar year 2001, Ameritech Michigan's profit margin was 18.5%[1], or six times the 2.8% recorded by the Fortune 500.

- Had Ameritech Michigan been listed as a member of the Fortune 500 for calendar year 2001, its after-tax net income would have ranked it ahead of 375 of the 500 companies on the Fortune 500: ahead of Dow Chemical and even General Motors.

[1] ARMIS, 43-02, acct 178, net income; acct 48, total operating revenue.

Michigan Facts (cont.)

- The 2001 profit margin of Ameritech Michigan, per ARMIS, was higher than that of ***any other SBC company***.
- Also in 2001 per ARMIS, Ameritech Michigan's after-tax profit per phone line was over $133[1], higher than any other Bell company in the U.S., and ***three*** times that of ***Verizon***.
-

[1] ARMIS 43-08, total access lines; and data elements shown, previous slides.

(Source: ARMIS)		
	After-Tax	
2001 Results:	Profit Margin	
Ameritech Michigan	**18.5%**	*
Ameritech Ohio	17.3%	
Ameritech Indiana	16.8%	
Ameritech Wisconsin	16.8%	
Ameritech Illinois	15.7%	
SNET	10.0%	
Southwestern Bell	**9.1%**	
Pacific Bell	8.3%	
Nevada Bell	-1.0%	
Total - SBC	11.5%	
* "SBC executives reserve special scorn for Michigan..." (Wall Street Journal, 12/12/02)		

While SBC Claims That It's Profits Have Been Hurt In Michigan and Ameritech By UNE-P, The ***FACTS*** Show Ameritech Michigan Profits Are ***TWICE*** As High As In Whitacre's SWBT!

Michigan Facts (cont.)

- Nor were the 2001 results for Ameritech Michigan an anomaly.
- In 1996, Ameritech Michigan had after-tax net income of $458 million, and this figure then grew by 40 percent to reach the 2001 number of $640 million
- – nearly two-thirds of a billion dollars, from a state that represents only about 3 1/2 percent of the U.S. population.

The 3rd SBC Claim:

- **THE REQUIRED PRICE FOR UNE-P IN MICHIGAN:** At the end of August 2002, SBC demanded the Michigan Public Service Commission permit it to hike its Michigan UNE-P price to ***"$34, which it says is the cost"***.[1]

[1] Amy Lane, Crains Detroit Business, 9/17/02.

The Facts:

- On November 18, 2002, SBC submitted into the FCC's record its plan for the "Development of a Sustainable Wholesale Model", where UNE-P-like service would be provided to CLECs at a price of $26.
- If, as SBC testified in Michigan, its ***cost*** is ***$34***, and it is precluded by Michigan law in selling service below cost, how can it then offer service for ***$26***?

And Then More Facts:

- Meanwhile, SBC' CFO Randall Stephenson says that at $20 to $21, the UNE-P price is pretty good: "So state of Texas, it's about a $20/21 UNEP. You know, the state of Texas, you have a pretty rational model. You know at $20/21, you have good, vibrant competition and it's not at such a level where we cannot earn money or are disincented to invest."[1]

[1] Randall Stephenson, CFO of SBC, Speaking at Bank of America Securities Annual Investment Conference, Sept. 23-26, 2002.

SBC Cannot Be Trusted

- Claims $34 is actual UNE-P cost
- Then tells FCC $26 is an o.k. price
- Then quietly tells investment community that $20 or $21 is an o.k. price
- And at $20 or $21, it can earn money and still has an incentive to invest

Conclusion:

- The assumption that "Something has to be done about UNE-P" and that "Something has to be done about TELRIC" was based on the assumption that SBC was telling the truth about alleged UNE-P losses, and its UNE-P financial problems in Ameritech.
- But these statements, from the beginning, were ***false***.

SBC Misrepresents Michigan Service Quality

- 2/8/2002 SBC press release: "SBC Ameritech Michigan Dramatically Improves Service Quality in 2001".

- The 2001 Facts (FCC ARMIS):
  - SBC Michigan "initial out-of-service repair interval" worst in U.S.: SBC Michigan 36.1 hours; BellSouth 19.2; Qwest 14.1; SWBT 23.6; Verizon 21.2.
  - State complaints per million lines: SBC Michigan 425; BellSouth 232; Qwest 228; SBC 181; Verizon 185.
  - Customer satisfaction survey: SBC Michigan also the worst: residence; also worst, business.

SBC Misrepresents # of Michigan CLECs

- "As of September [2002], there are 75 different CLECs operating in our service territory in Michigan" (SBC Michigan PSC testimony, 11/25/02).

- MPSC: The top 15 CLECs in Michigan represent 96% of the CLEC lines (CLECs think there are only about 20 CLECs now operating in Michigan

  (Mich PSC, Competitive Market Conditions Update, Oct. 2002)

SBC Misrepresents the Competitive Reach of Facilities-Based CLECs in Michigan

- SBC: Michigan facilities-based CLECs "have the capability today to address… 82 percent of our business customers and 76 percent of our residential customers".
  (SBC Michigan PSC testimony, 11/25/02.)

- Wrong. SBC admits that "CLECs are collocated in approximately 125 SBC Ameritech wire centers in the state of Michigan, or about a ***third*** of all wire centers". (SBC Michigan data, 11/25/02.) And CLECs say the real number of collocations capable of ***local dial tone*** is about 65, or a ***sixth*** of all wire centers. (CLEC Michigan PSC testimony, 11/25/02)

Misrepresentation: SBC Claims Huge Michigan Local Rate Cut

- **The Claim:** SBC press release, 6/11/02: "SBC Ameritech Announces $26 Million Savings for Michigan Customers. Majority of Michigan Customers Will Be Converted to Unlimited Local Service; Prices Reduced by Up to 30 Percent…
- SBC Ameritech announced today that it will be making sweeping changes to its existing residential customer call packages, converting more than 75 percent of its residential customers to unlimited local service and dramatically lowering rates for other customers on the unlimited local plan. In addition, the company will offer unlimited local toll for the first time in its history, adding the service to more than 100,000 customers' packages with no change in price.
- More than 2.2 million SBC Ameritech customers will benefit…resulting in prices reduced by up to 30 percent and a total of more than $26 million in savings annually.. SBC has slashed the price of its stand-alone unlimited local calling offer from $21 to about $14. We are contacting our 2.2 million customers to tell them that these benefits are being added to their packages," said Gail Torreano, president, SBC Ameritech Michigan. "Personally, I plan to knock on doors in Southeast Michigan neighborhoods with our employees to tell customers about the changes and listen to the feedback they have for us."

- **The Facts:** The $26 million rate cut was accompanied by request to hike directory assistance rates – canceling out the savings. But even taken at face value, $26 million represents only **eight-tenths of one percent** of SBC's annual revenues in Michigan: $3.465 billion (ARMIS).
- Only 4 percent of SBC's Michigan customers received the $21-to-$14 rate cut. The vast majority of SBC's customers didn't make more than 400 local calls per month, and thus received no savings whatsoever in being converted to flat-rate service.

Actual Situation on SBC Michigan Local Phone Prices:

- SBC Michigan's local phone prices over last 10 years have increased more than other RBOCs: SBC Michigan: 38%; Qwest 25%; Verizon, 7% **reduction** **(ARMIS 43-03 table I, account 5000, local services revenue; 43-08, table II, total switched access lines.)**
- FCC "sample cities" data, last 10 years: Michigan cities, 41.7% increase; rest of U.S., 6.1% increase. (Table 1.4, Reference Book of Rates, Price Indices.. for Telephone Service, Industry Analysis and Technology Division, FCC, July, 2002: weighted by population data from U.S. Census for each city, 2000 census data; SBC Ameritech Michigan compared to rest of U.S. outside of Ameritech region. For the remainder of Ameritech states, the increase over the 10-year period was 11.3%.)

SBC Misrepresents Its Michigan Long-Distance Rates

- "Every day of delay [in 271 approval] is another day **Michigan** consumers pay more for **long distance** service than they should," said Gail **Torreano**, president, **SBC** Ameritech **Michigan.** **(Telephony OnLine, 9/6/02).**

- In 2001, SBC Michigan had toll revenues of $459 million—larger than BellSouth's, for all 9 states combined; larger than SWBT, for all 5 states; almost twice that of Qwest, all 14 states combined (ARMIS).
- In 2001, Qwest had average toll revenue per line of $15.48. SBC Michigan: $95.51/line – highest of any RBOC in the country. (ARMIS: long distance revenues divided by switched access lines)

Overall Conclusion

- SBC's claims during the last year – in Michigan, to the FCC, and to the public – have been universally false.
- FCC must respond to Court of Appeals on UNE-P (etc.), but should give no weight to SBC claims.
- FCC may want to revisit TELRIC, but should give no weight to SBC claims that TELRIC pricing is below cost.

EXHIBIT 4

Fortune 500, Year 2001 30 Companies, Fortune 500 List	1st Q 2002			2nd Q 2002	
Company	Revenues	Profits	Profit Margin	2Q 2002 Revenues	2Q 2002 Profits
Wal-Mart	$55,418	$1,693	3.1%	$60,255	$2,038
Exxon Mobil	$43,531	$2,090	4.8%	$50,909	$2,640
General Motors	$46,264	$229	0.5%	$48,265	$1,292
Ford Motor	$39,857	($20)	-0.1%	$42,332	$276
Enron	$0	$0		$0	$0
General Electric	$30,521	$3,518	11.5%	$33,214	$4,426
Citigroup	$14,602	$4,907	33.6%	$26,928	$4,084
Chevron Texaco	$21,155	$725	3.4%	$25,223	$407
IBM	$18,030	$1,284	7.1%	$19,130	$56
Philip Morris	$20,535	$2,502	12.2%	$21,103	$2,610
Verizon Communications	$16,375	$247	1.5%	$16,835	-$2,115
American International	$14,480	$2,067	14.3%	$13,501	$1,801
American Electric Power	$13,030	$158	1.2%	$14,528	-$288
Duke Energy	$0	$0		$16,333	$474
AT&T	$11,984	($103)	-0.9%	$12,065	-$12,830
Boeing	$12,829	$578	4.5%	$13,857	$779
El Paso	$3,755	$248	6.6%	$2,987	-$59
Home Depot	$14,282	$856	6.0%	$16,277	$1,182
Bank of America	$7,871	$2,179	27.7%	$11,431	$2,221
Fannie Mae	$12,986	$1,208	9.3%	$13,212	$1,465
J.P. Morgan Chase	$6,286	$982	15.6%	$11,315	$1,028
Kroger	$15,667	$381	2.4%	$11,927	$273
Cardinal Health	$13,242	$300	2.3%	$13,028	$296
Merck	$9,848	$1,625	16.5%	$12,810	$1,751
State Farm Insurance	$0	$0		$0	$0
Reliant Energy	$7,030	$97	1.4%	$9,779	$236
SBC Communications	$10,522	$1,710	**16.3%**	$10,843	$1,845
Hewlett-Packard	$10,621	$238	2.2%	$16,536	-$2,029
Morgan Stanley Dean Witter	$8,540	$870	10.2%	$8,149	$819
Dynegy	$8,652	$116	1.3%	$9,906	-$328
Total, "Fortune 30"	$487,913	$30,685	6.3%	$566,631	$14,444
Total, Less SBC:	$477,391	$28,975	**6.1%**	$555,788	$12,618

3rd Q 2002

Profit Margin	Revenues	Profits	Profit Margin
3.4%	$59,330	$1,863	3.1%
5.2%	$54,182	$2,640	4.9%
2.7%	$43,578	($854)	-2.0%
0.7%	$39,580	($210)	-0.5%
	$0	$0	
13.3%	$32,585	$4,087	12.5%
15.2%	$15,084	$3,730	24.7%
1.6%	$25,503	($904)	-3.5%
0.3%	$19,821	$1,694	8.5%
12.4%	$19,996	$4,471	22.4%
-12.6%	$17,201	$4,780	27.8%
13.3%	$17,150	$1,912	11.1%
-2.0%	$14,912	$62	0.4%
2.9%	$0	$0	
-106.3%	$11,956	$245	2.0%
5.6%	$12,690	$372	2.9%
-2.0%	$2,656	($33)	-1.2%
7.3%	$14,475	$940	6.5%
19.4%	$8,185	$2,235	27.3%
11.1%	$13,321	$996	7.5%
9.1%	$6,316	$40	0.6%
2.3%	$11,696	$255	2.2%
2.3%	$13,086	$288	2.2%
13.7%	$12,693	$1,884	14.8%
	$0	$0	
2.4%	$5,335	$58	1.1%
16.8%	$10,556	$1,770	**16.8%**
-12.3%	$18,048	$390	2.2%
10.3%	$8,156	$632	7.7%
-3.3%	$1,720	($1,249)	-72.6%
2.5%	$509,811	$32,094	6.3%
2.3%	$499,255	$30,324	**6.1%**

EXHIBIT 5

Calendar Year 2001 RBOC Financials

(Source: FCC ARMIS Database)

Entity	Revenues ($000)	Net Income ($000)	**After-Tax Profit Margin**	Switched Access Lines (000)	**Net Income Per Line**
Ameritech Michigan	$3,464,580	$640,380	**18.5%** *	4,804	**$133.29**
Ameritech Ohio	$2,466,805	$426,618	**17.3%**	3,891	**$109.64**
Ameritech Indiana	$1,369,833	$230,542	**16.8%**	2,202	**$104.71**
Ameritech Wisconsin	$1,306,264	$219,664	**16.8%**	2,021	**$108.67**
Ameritech Illinois	$4,147,646	$653,176	**15.7%**	6,230	**$104.84**
SNET	$1,643,471	$163,607	**10.0%**	2,334	**$70.10**
Southwestern Bell	$12,455,115	$1,137,402	**9.1%**	14,461	**$78.66**
Pacific Bell	$11,218,462	$936,497	**8.3%**	17,549	**$53.37**
Nevada Bell	$205,731	-$1,968	**-1.0%**	366	**-$5.38**
Total - SBC	$38,277,907	$4,405,918	**11.5%**	53,858	**$81.81**
Bell South	$18,029,818	$2,275,354	**12.6%**	24,088	**$94.46**
Qwest	$11,878,019	$1,304,848	**11.0%**	17,070	**$76.44**
Verizon - RBOC	$26,311,963	$936,068	**3.6%**	41,797	**$22.40**
Verizon - GTE	$13,047,010	$1,642,068	**12.6%**	18,478	**$88.87**
Verizon - Total	$39,358,973	$2,578,136	**6.6%**	60,275	**$42.77**
Total - Bell Companies	$107,544,717	$10,564,256	**9.8%**	155,290	**$68.03**

FCC, ARMIS, Data for Calendar Year 2001:
Revenues: ARMIS 43-02, Table I1, row 530, total operating revenue
Net Income: ARMIS 43-02, Table I1, row 790, net income
Switched Access Lines: ARMIS 43-08, Table II, column CJ, Total Switched Access Lines.

Calendar Year 2001 Ameritech Michigan Financials

(Source: FCC ARMIS Database)

Item	Row	Amount ($000)
Total Operating Expenses	720	$2,048,542
Depreciation and Amortization	6560	$640,380
Net Operating Expenses:		$1,408,162

FCC, ARMIS, Data for Calendar Year 2001:
43-02, Table I1,
Row 720, Total Operating Expenses
Row 6560, Depreciation and Amortization Expense

EXHIBIT 7

2001 Results:	After-Tax Profit Margin	
Ameritech Michigan	18.5%	*
Ameritech Ohio	17.3%	
Ameritech Indiana	16.8%	
Ameritech Wisconsin	16.8%	
Ameritech Illinois	15.7%	
SNET	10.0%	
Southwestern Bell	9.1%	
Pacific Bell	8.3%	
Nevada Bell	-1.0%	
Total - SBC	11.5%	

* "SBC executives reserve special scorn for Michigan..."
(Wall Street Journal, 12/12/02)

2001 Results:	After-Tax Profit Margin
Ameritech Michigan	18.5% *
Ameritech Ohio	17.3%
Ameritech Indiana	16.8%
Ameritech Wisconsin	16.8%
Ameritech Illinois	15.7%
SNET	10.0%
Southwestern Bell	9.1%
Pacific Bell	8.3%
Nevada Bell	-1.0%
Total - SBC	11.5%

* "SBC executives reserve special scorn for Michigan..."
(Wall Street Journal, 12/12/02)

In FCC "Sample Cities" Data, Last 10 Years:
chigan Cities, 41.7% Increase; Rest of U.S. (Outside Ameritech), 6.1% Increase
Change In Monthly Residential Telephone Rates -- FCC's Sample Cities

Rates include touch-tone service, surcharges, 911 charges, and taxes

For All The Cities on FCC's Sample Cities List
Monthly Residential Telephone Rate Data As of Oct. 15, 1991 and Oct. 15, 2001
State/Regional/National Weighted Averages Use April, 2000 U.S. Census Population Data
Rates are for flat-rate service where available and measured/message service with 100 local calls elsewhere
Data is from FCC Table 1.4, Reference Book of Rates, Price Indices...for Telephone Service
Industry Analysis and Technology Division, FCC, July, 2002

Place Name	State	Oct. 15, 1991	Oct. 15, 2001	% Increase	Population, April 1, 2000
Detroit	MI	$19.04	$26.68	40.1%	951,270
Grand Rapids	MI	$17.06	$24.35	42.7%	197,800
Saginaw	MI	$16.31	$27.30	67.4%	61,799
Total, Michigan:		$18.58	$26.33	41.7%	1,210,869
Chicago	IL	$18.17	$21.61	18.9%	2,896,016
Decatur	IL	$20.29	$21.05	3.7%	81,860
Rock Island	IL	$20.93	$20.65	-1.3%	39,684
Indianapolis	IN	$22.47	$19.87	-11.6%	791,926
Terre Haute	IN	$22.93	$23.26	1.4%	59,614
Canton	OH	$21.29	$19.95	-6.3%	80,806
Cincinnati	OH	$20.30	$23.54	16.0%	331,285
Cleveland	OH	$21.29	$19.95	-6.3%	478,403
Columbus	OH	$21.29	$19.95	-6.3%	711,470
Toledo	OH	$21.29	$19.95	-6.3%	313,619
Milwaukee	WI	$16.66	$27.49	65.0%	596,974
Racine	WI	$16.63	$27.49	65.3%	81,855
Total, Other Ameritech:		$19.50	$21.71	11.3%	6,463,512
Anchorage	AK	$10.56	$15.23	44.2%	260,283
Huntsville	AL	$25.57	$24.32	-4.9%	158,216
Pine Bluff	AR	$22.60	$24.36	7.8%	55,085
West Memphis	AR	$29.28	$30.87	5.4%	27,666
Tucson	AZ	$18.20	$20.83	14.5%	486,699
Anaheim	CA	$12.30	$15.46	25.7%	328,014
Bakersfield	CA	$12.30	$15.46	25.7%	247,057
Fresno	CA	$12.30	$15.46	25.7%	427,652

Place Name	State	Oct. 15, 1991	Oct. 15, 2001	% Increase	Population, April 1, 2000
Long Beach	CA	$17.24	$25.18	46.1%	461,522
Los Angeles	CA	$13.52	$17.01	25.8%	3,694,820
Oakland	CA	$13.09	$16.62	27.0%	399,484
Salinas	CA	$12.91	$16.39	27.0%	151,060
San Bernardino	CA	$16.93	$24.72	46.0%	185,401
San Diego	CA	$12.74	$15.04	18.1%	1,223,400
San Francisco	CA	$12.97	$15.46	19.2%	776,733
San Jose	CA	$12.91	$16.23	25.7%	894,943
Boulder	CO	$20.59	$23.77	15.4%	94,673
Colorado Springs	CO	$20.37	$22.47	10.3%	360,890
Denver	CO	$20.80	$23.58	13.4%	554,636
Ansonia	CT	$16.68	$21.64	29.7%	18,554
Norwalk	CT	$18.06	$20.55	13.8%	82,951
Washington	DC	$22.16	$20.70	-6.6%	572,059
Miami	FL	$17.96	$18.44	2.7%	362,470
Tampa	FL	$17.95	$20.58	14.7%	303,447
West Palm Beach	FL	$16.50	$17.62	6.8%	82,103
Albany	GA	$20.70	$23.69	14.4%	76,939
Atlanta	GA	$24.48	$26.65	8.9%	416,474
Honolulu	HI	$19.29	$24.84	28.8%	371,657
Fort Dodge	IA	$13.66	$17.36	27.1%	25,196
Louisville	KY	$24.22	$27.19	12.3%	256,231
Baton Rouge	LA	$22.19	$21.22	-4.4%	227,818
New Orleans	LA	$23.31	$20.16	-13.5%	484,674
Boston	MA	$18.97	$24.16	27.4%	589,141
Hyannis	MA	$17.42	$24.16	38.7%	15,683
Springfield	MA	$18.44	$24.16	31.0%	152,082
Baltimore	MD	$25.27	$25.85	2.3%	651,154
Portland	ME	$18.24	$24.54	34.5%	64,249
Detroit Lakes	MN	$19.83	$21.16	6.7%	7,948
Minneapolis	MN	$21.19	$22.14	4.5%	382,618
Kansas City	MO	$20.33	$20.26	-0.3%	441,545
Mexico	MO	$17.07	$19.63	15.0%	11,320
St. Louis	MO	$20.16	$20.45	1.4%	348,189
Pascagoula	MS	$26.34	$26.52	0.7%	26,200
Butte	MT	$19.25	$23.86	23.9%	33,882
Raleigh	NC	$19.45	$18.82	-3.2%	276,093
Rockingham	NC	$17.22	$17.55	1.9%	9,672
Grand Island	NE	$21.85	$27.85	27.5%	42,940
Phillipsburg	NJ	$13.16	$14.68	11.6%	15,166
Alamogordo	NM	$19.12	$18.21	-4.8%	35,582
Binghamton	NY	$25.74	$24.62	-4.4%	47,380
Buffalo	NY	$33.18	$20.09	-39.5%	292,648
New York City	NY	$26.79	$25.07	-6.4%	8,008,278
Rochester	NY	$20.98	$19.02	-9.3%	219,773
Corvallis	OR	$19.21	$21.72	13.1%	49,322
Portland	OR	$21.44	$22.74	6.1%	529,121
Allentown	PA	$16.10	$18.99	18.0%	106,632
Ellwood	PA	$14.76	$19.41	31.5%	8,688
Johnstown	PA	$19.25	$23.58	22.5%	23,906

Place Name	State	Oct. 15, 1991	Oct. 15, 2001	% Increase	Population, April 1, 2000
New Castle	PA	$14.76	$17.71	20.0%	26,909
Philadelphia	PA	$17.44	$20.07	15.1%	1,517,550
Pittsburgh	PA	$17.44	$20.07	15.1%	334,563
Scranton	PA	$16.10	$18.99	18.0%	76,415
Providence	RI	$23.62	$24.68	4.5%	173,618
Beaufort	SC	$21.61	$21.40	-1.0%	12,950
Memphis	TN	$20.31	$21.05	3.6%	650,100
Nashville	TN	$19.21	$20.63	7.4%	569,891
Brownsville	TX	$15.42	$17.92	16.2%	139,722
Corpus Christi	TX	$16.22	$16.93	4.4%	277,454
Dallas	TX	$18.45	$20.22	9.6%	1,188,580
Fort Worth	TX	$16.80	$19.62	16.8%	534,694
Houston	TX	$19.40	$19.59	1.0%	1,953,631
San Antonio	TX	$16.67	$17.75	6.5%	1,144,646
Logan	UT	$15.63	$20.02	28.1%	42,670
Richmond	VA	$23.98	$29.53	23.1%	197,790
Smithfield	VA	$16.90	$26.73	58.2%	6,324
Everett	WA	$19.86	$21.02	5.8%	91,488
Seattle	WA	$16.06	$19.70	22.7%	563,374
Huntington	WV	$28.63	$27.10	-5.3%	51,475
Total, Other U.S.:		$19.73	$20.93	6.1%	36,011,863

PSC stops SBC Ameritech's plan to raise rates for competitors

By Amy Lane Crain's Detroit
Sept. 17, 2002 11:04 AM

The **Michigan Public Service Commission** has handed **SBC Ameritech Michigan** a delay in its plan to raise what it charges competitors.

In an order issued Monday, the commission denied a waiver sought by SBC Ameritech and said the company must file complete cost studies with the PSC if it wants to more than double the wholesale rate it charges competitors.

SBC Ameritech sought to raise its wholesale rate from $14.44 per line to $34, which it says is its cost of giving competitors access to its lines. San Antonio-based SBC Communications Inc. has said such wholesale pricing forces it to subsidize competitors without recouping its costs, ultimately limiting its ability to invest in its network.

The company says the need to increase the rate, first set in 1999, has grown as competitors siphon off Ameritech customers, using Ameritech lines to provide service.

The PSC left the door open to further consideration of the issue, saying it recognizes the company's costs may have changed since the commission last examined them. The PSC opened a new proceeding to consider cost studies for SBC Ameritech services.

SBC Ameritech spokeswoman Denise Koenig said Monday's order "is simply a request for more information." She said the company "is glad the commission recognized the importance of the filing and is taking a close look at the topic."

Said Koenig, "We regret the delay in the process, but we will do everything we can to move it forward."

Competitors hailed the PSC action. Companies such as **AT&T Corp.** had fought SBC Ameritech's moves to increase prices, saying the established rates are fair and to raise them would stymie competition.

"We think it's a good day for Michigan consumers," said Mike Pruyn, AT&T public-relations director.

Ameritech may charge rivals double

Rates now below cost, chief says

By Jon Van
Tribune staff reporter

Chicago Tribune

September 4, 2002

SBC Ameritech will seek to double its wholesale prices to competitors in an effort to boost profits, said Edward Whitacre Jr., chairman of Ameritech's parent, SBC Communications Inc.

Whitacre, who made his remarks during a visit to the Tribune's editorial board on Tuesday, said that regulators in Illinois and other Midwestern states require SBC Ameritech to sell service to rivals at rates lower than it costs SBC to maintain its network.

SBC is eliminating jobs and cutting back capital expenditures, but sees its profits eroding faster than it can cut costs, Whitacre said.

"Our revenue is plummeting like a rock," he said. "This is leading to the ultimate ruin of this network."

SBC refers to "artificial competition" engendered by wholesale prices set below costs, but others say the firm is only complaining because after years of inaction, true competition has finally come to local phone service in Illinois and some other states.

"They ought to quit whining and just compete," said Mark Cooper, research director for the Consumer Federation of America. "They want to be an unregulated monopoly."

If Illinois regulators did what SBC is asking, Cooper said, it would result in AT&T Corp. and MCI paying SBC Ameritech more for service than Ameritech charges retail customers, eliminating any competition.

Ameritech still seeks regulatory approval to offer long-distance service to its local customers, but Whitacre said long-distance no longer offers the profit margins necessary to balance the money SBC is losing to competitors when they buy Ameritech service at wholesale rates and then resell it to consumers.

"Long-distance won't offset that," Whitacre said. "It won't even come close."

Crain's Detroit Business, Sept. 2, 2002

Phone rate hike sought

Ameritech's competitors' access fee would double

By **Amy Lane**

€ September 02, 2002

LANSING - SBC Ameritech Michigan has asked state regulators' permission to more than double the wholesale rate it charges competitors, saying it needs the additional revenue to cover the costs of giving competitors access to its lines.

The company filed a request last Friday with the Michigan Public Service Commission to raise the rate from the current $14.44 a line to $34, which is SBC Ameritech's per-line cost, said SBC Ameritech Michigan President Gail Torreano.

"At $14.44, we're about $20 under water. What we're doing is we're subsidizing our competitors," Torreano said.

The company said the need to increase the rate, first set in 1999, has grown as competitors siphon off Ameritech customers, using Ameritech lines to provide service. Torreano said that without the rate increase Ameritech won't have the money it needs to maintain its network.

But a Lansing-based coalition of consumer groups, business organizations and local-phone companies isn't buying Ameritech's financial argument. The Michigan Alliance of Competitive Telecommunications is urging state regulators to deny Ameritech's request.

Dave Waymire, spokesman for the alliance, said that based on Federal Communications Commission data, Ameritech had a 29 percent rate of return on its investments in Michigan in 2001, and the proposed rate increase is "pure greed."

He said Ameritech simply is having to face the effects of increased competition like any provider. "They want monopoly rates of return in a competitive system, and they can't have it," he said.

It's the second time in a week SBC Ameritech, a subsidiary of San Antonio-based SBC Communications Inc. (NYSE: SBC), has come

under fire in Michigan for wanting too much money.

Last Monday, Ameritech and the Engler administration reached a legal settlement that would result in Ameritech lowering customers' bills by about 15 percent or $29 million annually.

The settlement, which still must be approved by U.S. District Court in Detroit, would lower the monthly end-user common-line charge.

But consumer advocates and Michigan Attorney General Jennifer Granholm called the reduction insufficient and a bad deal for consumers. A hearing is scheduled Sept. 26 to determine if Granholm can intervene in the case. The settlement is likely to be an issue as Granholm campaigns for governor.

Michigan Public Service Commission Chairman Laura Chappelle said that the settlement closes lengthy litigation that might not have reached trial until at least spring of 2003 and recognizes that Ameritech has lost business to other local-phone providers and has been cutting rates to compete.

Now, the PSC will have another matter to consider. Competitors say current Michigan wholesale rates are in line with neighboring states and other states where competition is flourishing. To raise them would kill competition.

But Torreano used a $22.33 rate in Florida as an example of why Michigan's rate should rise. She said Michigan is not as densely populated as Florida, thus costing more to provide service.

She said if Ameritech doesn't get the increase, it might at some point have to lay off an unspecified number of its 16,000 Michigan employees. She said the PSC could act on Ameritech Michigan's application in 90 to 180 days. SBC has also filed for an increase in Ohio and is looking at doing so in Illinois.

Regulators in SBC Ameritech's five-state region - Illinois, Ohio, Michigan, Indiana and Wisconsin - have set wholesale rates in recent months that are among the lowest in the nation. Rates in all five states except Wisconsin are below the national average wholesale rate, and Wisconsin's are under review and likely to decline.

SBC Chairman and CEO Edward Whitacre called the pricing practice "nuts" when he talked to Wall Street analysts last month, and he is

hoping to persuade Illinois politicians and policymakers to see things his way when he visits that state on Tuesday.

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Crain's Chicago Business contributed to this story

SBC seeks to raise line fees

Rival says lease request 'unjustified'

August 31, 2002

BY JEFF BENNETT
FREE PRESS BUSINESS WRITER

SBC Communications Inc. asked Michigan's regulatory commission on Friday to more than double the price it can charge other competitors who lease the telephone company's lines.

The request, filed with the Michigan Public Service Commission, seeks to raise the price to $34 a month per line from the $14.44 competitors -- such as AT&T -- now pay to lease the lines. SBCCommunications Inc., which owns **Ameritech** Michigan, operates 4.4 million telephone lines in the state.

Mike Pruyn, AT&T spokesman, said the proposal is "unjustified."

"We plan to file a motion to dismiss this proposal soon," Pruyn said. "We find it ironic that less than a month after SBC portrayed itself to Wall Street as a financially healthy company with a 42.1-percent profit margin, it is crying the sky is falling and needs to increase the rates."

Under the 1996 Telecommunications Act, SBC was required to allow competitors to lease its lines so the competitors could resell telephone service under their own name. The state, with input from SBC and experts, set the monthly charge at $14.44.

SBC officials said the charge is too low since it costs them $27 per month to maintain a line.

A PSC ruling could be made within 90 days or take as long as six months.

While residential and business customers will see no cost increase in their bills, SBC and Ameritech officials said there will be problems if the increase isn't approved.

"We cannot continue operating the network at that kind of loss," said Gail Torreano, SBC Ameritech president. The company has already warned that it will lay off some of its 16,000 workers, which will affect service.

David Waymire, spokesman for Michigan Alliance for Competitive Telecommunications, said Ameritech will lay off workers when they want to lay off workers and a price increase makes no difference.

"We are just starting to get competition built up and they want to jack their prices up and cut competition," he said.

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Don't Force Ameritech to Subsidize Competitors

By The Detroit News, Thursday, October 3, 2002

SBC Ameritech, Michigan's largest local phone company, is asking state regulators for permission to raise the phone line rates it charges its competitors. Ameritech's request is reasonable.

But this issue highlights bigger problems with the way the Federal Communications Commission (FCC) deregulated the nation's telecommunications industry four years ago. Only the FCC can fix these problems.

SBC, the Texas company that acquired Ameritech, maintains that its Michigan operations lost more than $1 billion during the last three quarters. It blames these losses on the Michigan Public Service Commission (PSC) for forcing it to sell the use of its local telephone lines below cost to its competitors.

This allows the competitors, many of whom such as AT&T and MCI are giants in the long distance market, to slash their local service rates and skim off some of Ameritech's most lucrative customers. But what's even worse from Ameritech's standpoint is that it is required to service any problems in the lines leased by its competitors, something that guarantees the competitors profits at Ameritech's expense.

The Issue

How should state and federal agencies reform telecommunications law to ensure more competition?

Michigan sets low phone rate

Michigan has a lower rate per household for allowing competitors to use SBC Ameritech phone lines compared with similar states that have non-SBC phone companies:

Michigan	**$14.44**
Tennessee	$18.05
Georgia	$18.44
Pennsylvania	$19.84
Kentucky	$20.14
Virginia	$21.92
Florida	$22.33
South Carolina	$23.62
North Carolina	$23.68

Source: SBC Ameritech

It is not surprising that Ameritech is losing nearly 4,000 customers a day in Michigan, where wholesale phone line rates are third lowest in the country, while the market penetration of its competitors has grown tremendously.

This kind of competition in an industry that was once dominated by a monopoly has immediate benefits for Michigan consumers, who are enjoying a broader array of services at cut-throat prices. But in the future, there will be problems if Ameritech's rivals continue to hollow out its profits without investing in alternative telephone line infrastructure of their own.

Simply granting a hike in the prices that Ameritech is allowed to charge its competitors may improve Ameritech's bottom line in the short run, but it won't give its competitors an incentive to build their own phone lines in the long run, the necessary prerequisite for genuine competition. That will only happen when the Michigan Public Service Commission sets a date to end such price controls.

But it can't do this unless the Federal Communications Commission, which oversees telecommunications policy across the country, gives it the green light.

The FCC asked state regulators to fix wholesale prices on local phone lines following

the 1996 Telecommunications Act. Its theory was that companies like Ameritech had enjoyed exclusive rights on such lines for so long that rivals would find it hard to compete effectively without cheap access to the existing infrastructure.

But the growth of wireless phone services and other broadband technologies have changed the competitive situation for SBC Ameritech and other phone companies. Whatever the rationale for forcing Ameritech to subsidize its competitors four years ago, there is no justification for asking it to do so now.

Ameritech's plight demonstrates that such subsidization measures have become an impediment to competition, which is why the telecommunications act did not intend for them to be permanent.

The Federal Communications Commission is reviewing its implementation of the telecommunications act. It should take the opportunity to free the industry by ending its price mandates.

Reporter's notebook: Regulatory and policy

TelephonyOnline.com, Sep 6 2002

SBC Communications has asked the **Michigan Public Service Commission** to direct third-party auditor KPMG to issue its report on subsidiary Ameritech Michigan's operational support systems. KPMG has been testing the systems for the past 18 months. SBC claims that competitors serve about 28%--or about 1.7 million--of the business and residential access in its service area. "Our systems work, the local phone market is open and competitive, and every day of delay is another day Michigan consumers pay more for long-distance service than they should," said Gail Torreano, SBC Ameritech Michigan president.

--Glenn Bischoff, Senior Writer

FCC STATS REFUTE RBOCs' PLEA FOR RELIEF

Glenn Bischoff

Telephony, Dec 16, 2002

The FCC's Local Competition Report released last week showed that market share for competitive carriers continued to grow at a steady — if unspectacular — clip, with much of that expansion attributable to an increased reliance on unbundled network elements.

But while RBOCs have used UNE pricing as their regulatory sledgehammer this year, statistics show that price may not be a major factor in CLECs' decision to use of the platform.

CLECs' share of the local market increased to 11.4% at the end of June 2002, compared with 10.3% at this time a year ago — a growth rate consistent with that exhibited in each six-month increment dating back to December 1999. CLECs claimed 9% of the local market at the end of June 2001.

In fact, the increased penetration of CLECs, despite the disappearance of many competitors, is evidence that the Telecom Act is working — at least partially.

"It took us a long time to put in place an infrastructure that provided telephone service to everyone in the country, and I think that growing a competitive base also will take a significant amount of time," FCC Commissioner Kevin Martin said. "I don't think we're satisfied because we want to have a vibrant competitive market. But you have to put in context how long it's taken other industries to develop such as long-distance."

For their part, ILECs appear to be as — if not more — concerned about inroads made by cable and wireless over the past six months. According to the FCC report, cable providers own 1% of the local telephony market, a paltry figure at first glance, but one that represents a sizeable increase over cable's share just six months ago, according to Link Hoewing, Verizon Communications' assistant vice president for Internet and technology policy. Hoewing added that the 13% increase in wireless subscribers over the same period to 129 million is equally

alarming. "If you look at the report from three years ago, there's virtually no mention of these alternative forms of competition. That's significant," Hoewing said.

Still, it is the increased reliance on UNEs by the traditional competitive carriers that would appear to be giving RBOCs ammunition. According to the report, 50.5% of all access lines controlled by CLECs nationwide were provisioned via UNE loops leased from other incumbent carriers — a figure that is up from 43.9% at the end of June 2001 and more than double the percentage of CLECs relying on such facilities at this time three years ago.

Jim Smith, senior vice president of public policy for SBC Communications, said the figures were conservative because the FCC doesn't require carriers with less than 10,000 lines to report. He added that CLEC reliance on UNE-P has "totally eclipsed any growth" in facilities-based competition. Indeed, the percentage of CLEC-owned access lines decreased from 33.9% at the end of June 2001 to 28.8% in June 2002.

"This is not good for this country, for customers or for the sustainability of the industry going forward," Smith said.

The ILECs have complained loudly that the reason for the increased reliance on UNEs is that TELRIC prices are too low and allow CLECs to take advantage. In Michigan, which SBC often uses as the prime example of this trend, a basic UNE line costs $13.87, which is well below the $17.48 national average. As a result, 81.43% of all CLEC lines in the state are provisioned through UNEs.

However, a breakdown of the numbers on a state-by-state basis shows price isn't the only factor driving the trend. The FCC report showed that CLECs in 14 states have a greater reliance on UNE loops than the 50.5% national average. In 10 of those states, the average price for basic UNE-P was higher than the national average. In Mississippi, for example, UNE lines account for 76.4% of all CLEC lines, despite an average UNE-P price of $25.75, well above the national average.

Hoewing said one reason CLECs opt for the unbundled option, even when the price is relatively high, is because of the margin between cost and the retail price they can charge. "I think you'll find that in the states where there is a significant difference, where there is a lot of margin, there will be a lot more use of UNE-P," he said.

However, even those with facilities will rely on UNEs because of the unique economics forced on them by incumbents, said John Ivanuska, vice president of carrier relations for Birch Telecom. It is economically infeasible for a CLEC to connect its switch to the incumbent loop at the DS-0 level because associated costs go beyond the basic TELRIC costs, such as the cost of transport and cutting over customers.

"Over a five-year period, you'll spend $600 but get $400 back," he said.

The sloth-like manner in which incumbents execute cutovers also preclude some pure resellers from transitioning to facilities-based plans, said Tom Koutsky, vice

president of law and public policy for Z-Tel.

"SBC says it can do a million cutovers per year in the Ameritech region, which I believe is a very optimistic projection, but that would cap our market share at about 7% in the region," he said. "That's the reason you're not seeing conversions: The processes aren't scalable in a cost-effective manner right now."